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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

Petitioner,

– against –

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Does the Labor-Management Reporting and Disclosure Act protect the confidentiality of union members' address and telephone numbers from dissendents seeking to replace duely elected union leadership.

2. Should the Board's Order be modified so as to allow the dissidents to investigate their allegations of discrimination without violating union members' LMRDA protection.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OPINIONS BELOW

The decision of the Court of Appeals for the Second Circuit, Docket No. 86-4107, is reported at ____ F2d ____, and is included in the Appendix.

The opinion of the National Labor Relations Board below is reported at 279 NLRB No. 99. This Order adopted the finding, but modified the decision of the Board's Administrative Law Judge. Both opinions are found in the Appendix.

JURISDICTION

The Court of Appeals Order is dated February 10, 1987. A timely Petition for Rehearing was denied on March 4, 1987.

The statutory provision believed to confer jurisdiction on this Court to review the Order in question is 28 USC, §1254 (1).

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act §101, 29 U.S.C. §481 (1959) protects the confidentiality of union membership lists.

The National Labor Relations Act §8(b)(1)(A), 29 U.S.C. §158(b)(1)(A) imposes a duty of fair representation on the union.

STATEMENT OF THE CASE

On February 25, 1983, John Harte, herein called Harte, filed an unfair labor practice charge against the Union in Case No. 2-CB-9767. Harte alleged that the Union violated Sections 8b(1)(A) & (2) of the National Labor Relations Act, as amended, herein called the Act, (29 U.S.C. § 158(b)(1)(A) and (2)) by the Union's, *inter alia*, failure and refusal to provide him with the names, addresses and telephone numbers of persons who have applied for or been given referral to employment by the Union during the prior 6 months, including the dates of application and/or referral, despite Harte's request for same.

On March 22, 1983, Franklin McMurray, herein called McMurray, filed a charge in Case No. 2-CB-9811 and Eugene Clarke, herein called Clarke, filed a charge in Case No. 2-CB-9812. Both of these charges contained allegations similar to those made by Harte.

On April 29, 1983, the Honorable Daniel Silverman, Regional Director for Region 2 of the National Labor Relations Board, pursuant to Section 10(b) of the Act, (29 U.S.C. § 160(b)), issued an Order consolidating the above three cases together with a Complaint and Notice of Hearing. The operative paragraphs of the Complaint alleged that the Union operated an exclusive referral system, commonly referred to as a hiring hall, and that the Union violated Section 8(b)(1)(A) of the Act by failing, after requested by the three individuals, to supply them with the names, addresses and telephone numbers of all persons who have either asked to be referred for work by the Union, or who have asked to have their names placed on the list for job referral; the dates of such requests, the identity of each person referred and the dates of each referral; where they were referred and their dates of hire, layoff or discharge.

The Union filed a timely answer denying that it had engaged in any unlawful activity or that it violated the statutory rights of the three charging parties.

A Hearing was held before the Honorable Steven Fish, Administrative Law Judge of the National Labor Relations Board on December 12, 20, 21 and 22, 1983 and April 10 and 11, 1984.

It was not alleged that the hiring hall system was operated in violation of any laws. In fact, the portions of the unfair labor practice charges relating to these items were withdrawn in lieu of being dismissed administratively.

On March 26, 1985 the Administrative Law Judge issued his Decision in this matter. The Judge concluded that the Union violated Section 8(b)(1)(A) of the Act. The Judge in his remedy directed the Union to cease and desist from denying employees the right to review or inspect hiring hall records where the refusal is relatd to an alleged failure to properly refer said employees or because the employees engaged in intra-union political activity. The Judge further directed the Union to cease and desist from arbitrarily denying the employees it represents from reviewing or inspecting the referral hall information where such request is related to an alleged failure to properly refer employees.

The Judge affirmatively directed the Union to honor such requests, particularly the requests of Harte, McMurray and Clarke where such requests are related to the alleged failure to properly refer such employees.

The Decision also included a posting of a notice to the Union's members relating to the violations found. The Union appealed this Decision to the Board. The General Counsel cross appealed.

On April 30, 1986, the Board, by a three member panel affirmed the decision of the Administrative Law Judge, but modified the Order to the extent of requiring the Union to allow the Charging Parties to *inter alia*, photocopy or duplicate the Union's hiring hall records, including names, addresses and telephone numbers.

The Board subsequently petitioned the United States Court of Appeals for the Second Circuit for enforcement of its Order.

The Court of Appeals accepted jurisdiction under Section 10(e) of the National Labor Relations Act (29 U.S.C. § 151, 160(e).)

On February 10, 1987 the Court enforced the Board's Order.

The Union Petitioned for rehearing before the Court of Appeals; the Petition was denied on March 4, 1987.

POINT I

THE DISSIDENTS SEEK TO MISUSE CONFIDENTIAL INFORMATION

The Union maintains a hiring hall for its members on a telephone referral basis. Members who wish to be referred to jobs notify the hiring hall. The members' name, address and specialty are written on index cards (Job Cards). The job cards are kept in a stack. When an employer calls requesting a referral the job cards are taken in order from the stack. Each member is called in turn. If the member is not at home, or refuses the referral, the card is so marked and returned to the bottom of the stack. This procedure continues until a member accepts the referral.

Harte, McMurray and Clarke (collectively the dissidents), founders of a dissident membership faction called "Carpenters for a Stronger Union", participated in the hiring hall.

In the latter half of 1982 and the first months of 1983 the dissidents, expressing concern that their attacks on union leadership were adversely affecting their referral opportunities, requested to inspect hiring hall records. They demanded the names, addresses and telephone numbers of members using the hiring hall.

During the period in which the dissidents were making their requests for members names, addresses and telephone numbers, McMurray was preparing an election campaign. In a meeting with the union election committee McMurray examined the membership list, as permitted by the union constitution and provision of the Labor-Management Reporting and Disclosure Act (LMRDA).

None of the candidates were permitted to copy the list. During this examination, however, McMurray read part of the list aloud, surreptitiously recording it on a tape recorder in his pocket.

Aside from this one instance of deception, the Union has never disclosed membership lists. Neither have the dissidents shown that hiring hall records have ever been given to any union member. Membership lists have been kept confidential by the Union.

The dissidents have waged a continuous election campaign, distributing and mailing out literature attacking the duly elected union officials. The Union recognizes that it is the dissidents right as union members to seek to further their electoral ambitions. However, the dissidents' actions, especially in stealing confidential membership records with a tape recorder, give the Union good cause to expect that the dissidents will misuse confidential hiring hall information for electioneering purposes.

POINT II

THE LMRDA PROTECTS UNION MEMBERSHIP LISTS FROM DISCLOSURE

In 1959 Congress enacted the LMRDA. When the LMRDA was passed, Congress, for the first time, undertook the task of policing the internal affairs of labor organizations. This law set down guidelines to assure that periodic elections of union officers take place and that the elections be conducted on a fair and nondiscriminatory basis. One of the provisions of the LMRDA proscribes against a union using dues or assessment funds for the purpose of promoting any particular candidate. Section 481(c) specifically addresses the question of whether candidates for union office are entitled to names and addresses or phone numbers of members. The statute provides in pertinent part:

> (c) Every . . . labor organization . . . shall be under a duty, . . . to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring

> membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots."

In *Wirtz v. American Guild of Variety Artists*, 267 F. Supp. 527 (S.D.N.Y., 1967) the New York Federal District Court held that under the above section unions do not have a choice, but a legally enforceable duty to comply with a candidate's request for a mailing at the candidate's expense. This obligation cannot be shirked by the union. It is a statutory obligation. See e.g., *Marshall v. Local Union 478, International Union of North America*, 461 F. Supp. 185 (D.C. Fla., 1978). As long as the union acts in the same manner to all candidates, incumbents included, *vis a vis* disclosure and access to mailing list information, there will be no violation of Subsection c. See e.g., *Schultz v. Radio Officers Union*, 344 F. Supp. 58 (S.D.N.Y. 1972). However, it is also the law that a candidate in a union election running against an incumbent does not have an automatic right to copy membership lists on the theory that the list is available to incumbents at all times. Such lists will not be provided to candidates unless it is proven that the incumbents have made a copy of the list for themselves or are actually making use of the list. *Conley v. Aiello*, 276 F. Supp. 614 (S.D.N.Y. 1967). Thus, the Courts clearly distinguish between a right of access to the information contained on the list and the actual list. As Senator Kennedy stated to the Senate in a report accompanying this proposed Legislation, the purpose of this section was to protect members' rights to vote in union elections without being subject to improper influence or reprisals (86th Congress, 1st Session, Report No. 187, April 14, 1959, accompanying § 1555).

Thus, when Congress passed the LMRDA in 1959, it was well aware of the duties that unions owed their members under the National Labor Relations Act of 1948. Congress in the pre

1948 Amendment debates previously addressed the question of hiring halls and spoke approvingly on same. (*Mountain Pacific Chapter*, 119 NLRB 883, 884 n. 9 (1958)). Coupled with this approval, in 1959 it chose to allow unions in all instances to determine whether or not their membership lists would become available for public use.

The LMRDA language on list accessibility in the original Senate Bill provided, *inter alia*:

> " . . . such labor organization and its officers shall not discriminate in favor or against any candidate with respect to the use of lists of members and shall comply with reasonable requests of any candidate . . . in aid of such person's candidacy to all members in good standing." S.1555, 86th Cong., 1st Sess., 105 Cong. Rec. 5979 (April 15, 1959).

In response to this proposed language, and an amendment which was proposed by Senator McClellan requiring copies of lists to be provided, Senator Kennedy stated:

> " . . . under the heading "Inspection of Membership Lists", the amendment provides that lists of members of the union shall be open to inspection to anyone – to a Communist cell, *to a group of dissident employees*, to an unfavorable employer. A union is a militant organization. It must be, for the protection of the rights of its members. I think it is highly unfair and unreasonable, in order to protect the rights of members, to provide that the lists of 15 million union members shall be made public. In the bill itself we protect the basic principle by providing that in an election every candidate for election shall have the right to have his election material mailed out . . . It seems to me that that protects the rights of union members.

> *We also protect the right of the union to preserve its lists inviolate.* 105 Cong. Rec. S 6491 (daily ed. April 22, 1959) (statement of Sen. Kennedy). (Emphasis added).

As expected, Senator McClellan's proposed amendments were rejected. 105 Cong Rec. S 6552 (daily ed. April 23, 1959).

A joint committee was established to study the existing Senate Bill S.1555 and the House Bill HR 8342. (*Id.* at 15913) Ultimately, the Senate rejected the House Bill and agreed to the language as it finally passed. Senator Kennedy, speaking on the results of the committee discussions on September 3, 1959, in an analysis of the existing differences between the House and Senate Bills, explained:

> " . . . The House bill would have required a labor union to open its membership lists to any candidate in connection with an election of officers, although this requirement might be fair in the case of the bona fide candidates, it created grave dangers that stooges would obtain the membership lists for subversive organizations or commercial use. The Senate conferences added the safeguard of limiting the right to inspection within 30 days prior to an election, without making copies of the list. 105 Cong. Rec. S17899 (daily ed. Sept. 3, 1959) (statement of Senator Kennedy).

Senator Kennedy specifically admonished that "the inspection [of the list] is not to enable [a candidate] to have a copy" (*Id.* at 17900).

As the Senator again explained:

> "Past experience demonstrates that unless lists of union members are kept confidential, they fall into the hands of employers who may use them for the purpose of breaking up the unions and into the hands of subevrsive organizations and commercial enterprises. The House Bill would have required the disclosure

> of lists of members employed under union security contracts to any candidate despite these dangers. The conference report limits the right of the candidate to inspecting the list" (*Id.* at 17900).

Senator Kennedy then went on to admonish that "I do not wish to detain the Senate unduly, but these matters are extremely important." (*Id.* at 17900).

After further debate, S1555 passed the Senate by a vote of 95 in favor and 2 opposed (*Id.* at 17919). The bill was then discussed in the House. The analysis before the House likewise pointed out the differences between the Senate bill which was passed and the House bill. The analysis provided:

> "The substitute agreed upon in conference contains both the provisions of the Senate bill and of the House amendment, except that the provisions from the House amendment are modified to deny candidates the right to copy membership lists and to restrict the right of candidates to inspect such lists to one time within 30 days of the election. (*Id.* at 18125)."

The Senate bill containing the protection against providing copies of the list was voted upon in the House on September 4, 1959, at which time it was passed by the overwhelming majority of 352 in favor of passage and 52 opposed. (*Id.* at 18154).

It is noted that Senator Goldwater, a known conservative legislator, spoke in favor of the proposal, when he wrote:

> "3. Legislation to Insure Union Democracy.
>
> While both bills effectively carried out this recommendation, the conferees adopted a very important provision contained in the House bill. It guarantees to every bona fide candidate for union office the right to inspect a list containing the names and addresses of all members of the union who are covered by a union shop contract. Such a provision, in my

> opinion, is a long stride forward in equalizing the balance between candidates running for union office, now so heavily weighted on the side of incumbents" (*Id.* at 18129)

As can be seen, Congress affirmatively stated and Senator Kennedy, a prime mover of the legislation, emphasized that union membership lists may be kept confidential in all instances. This includes confidentiality from candidates seeking to communicate their positions to their fellow members. Congress specifically did not want this information to fall into the hands of "subversive organizations" "goons" and "dissidents".

The record in this proceeding establishes that the Union has never granted access to its membership lists either to incumbents or others seeking to be elected to Union office.[1] Save for one exception the Union membership lists were not copied for use by any candidates. Without surprise the one exception was by Charging Party McMurray when he pirated the mailing list in preparation for the campaigns of those supported by himself, Harte and Clarke. Absent this one incident of theft, the Union has not disclosed, either intentionally or unintentionally, the names and addresses of its members.

The Board may look to *Operating Engineers Local 324, Associated General Contractors*, 226 NLRB 587 (1976), in support of its proposition that the Board has in the past ordered disclosure of names and addresses and telephone numbers. However, a close reading of that case will establish that the question of whether the LMRDA proscription militating against disclosure supersedes any right that might have existed under the NLRA, was never litigated. It would be difficult to

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[1] The Board found on the record that lists are not confidential. The Finding was based solely upon the discrediting of Union witnesses. The Supreme Court has consistently held that the rule of law is that discredited testimony is not considered a sufficient basis for drawing a contrary conclusion, e.g. *Bose Corp. v. Consumers Union of U.S. Inc.*, 446 U.S. 485, 512 (1984).

accept a proposition that Congress, in passing the LMRDA granting protective rights, did so with the knowledge that these rights were not to be protected by proceeding under different provisions of the statute. As the Supreme Court held in *Burlington Truck Lines v. U.S.*, where there are two statutes to be interpreted, any relief granted should be as precise and narrowly drawn unless there is a compelling justification for a more expansive remedy. 371 U.S. 156 (1962). The Board should have proceeded with a discriminating awareness of the consequences of its order. It did not do so.

POINT III

THE BOARD'S ORDER SHOULD BE MODIFIED TO RECOGNIZE UNION MEMBERS' LMRDA PROTECTION

In *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951), the Supreme Court set forth the test under which Courts of Appeals may review and either set aside or modify orders of the Board. The Court, in setting forth the responsibility owed by the Courts of Appeals stated:

> "Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before the Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both." 440 US at 490.

Thus, Courts of Appeals will not enforce Board orders which fail to properly analyze and apply laws outside the scope of the Board's expertise. *Schneider, Lorenz, Co., Inc. v. NLRB*, 517 F2d. 445 (2nd Cir. 1985) denying enforcement 209 NLRB 190.

The Court of Appeals erred in deferring to the NLRB's ruling that the LMRDA was inapplicable in the case at bar. The Board's expertise lies in the application of the National Labor Relations Act, not in analyzing the conflicts between provisions of the NLRA and the LMRDA. The Court of Appeals failed to properly make such an analysis in its decision to enforce the Board's Order.

The Union requests a modification of the Board's Order. However, the Union seeks to maintain only that minimal confidentiality, protected by the LMRDA, required to prevent the dissidents from misusing lists of union members names, addresses and telephone numbers.

The Union stands ready to allow the dissidents to inspect all hiring hall records, to examine the job cards of all members who used the hiring hall during the relevant period, to examine the employers call in log. Should the dissidents desire to contact any or all of the members listed on these job cards the Union will follow the procedure mandated by the LMRDA and send out dissident prepared material at the dissidents' expense.

This should provide the dissidents ample opportunity to make their own investigations of alleged hiring hall discrimination. At the same time such a modification of the Order will protect the interests of the union members as a whole, by preserving the confidentiality of their addresses and telephone numbers.

CONCLUSION

For the reason above the Court should grant certiorari. The union members should not lose the strictly delimited protection of the LMRDA based solely on the dissidents' request to investigate colorable allegations of discrimination by union management when such an investigation can be made without violating the LMRDA.

Respectfully submitted,

MANNING, RAAB, DEALY & STURM

By /s/
IRA A. STURM

APPENDIX

United States Court of Appeals

for the

Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 4th day of March one thousand nine hundred and eighty-seven

Present: HON. WILFRED FEINBERG, Ch. J.
HON. ELLSWORTH A. VANGRAAFEILAND,
HON. LAWRENCE W. PIERCE,
Circuit Judges,

Docket No. 86-4107

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

– v. –

CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS and JOINERS OF AMERICA, AFL-CIO,
Respondent.

A petition for a rehearing having been filed herein by CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS and JOINERS OF AMERICA, AFL-CIO, upon consideration thereof, it is Ordered that said petition be and it hereby is DENIED.

/ s / Elaine B. Goldsmith
Elaine B. Goldsmith
Clerk

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 621—August Term, 1986

(Argued: January 7, 1987 Decided: February 10, 1987)

Docket No. 86-4107

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

— against —

CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

Respondent.

Before:

FEINBERG, *Chief Judge,* VAN GRAAFEILAND and PIERCE, *Circuit Judges.*

Petition by National Labor Relations Board to enforce order requiring union to honor members' requests to inspect and duplicate hiring hall records.

Order enforced.

IRA STURM, New York, NY (Manning, Raab, Dealy & Sturm, of Counsel), for Respondent.

FREDERICK HAVARD, Attorney, National Labor Relations Board, Washington, DC (Rosemary M. Collyer, General Counsel, John E. Higgins, Jr., Deputy General Counsel, Robert E. Allen, Associate General Counsel, Elliott Moore, Deputy Associate General Counsel, Howard E. Perlstein, Supervisory Attorney, National Labor Relations Board, Washington, DC, of Counsel), for Petitioner.

FEINBERG, *Chief Judge*:

The National Labor Relations Board (the Board) petitions for enforcement of an order requiring Carpenters Local 608, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the union), to permit union members to inspect and duplicate hiring hall records that contain the names, addresses and telephone numbers of persons who had used the hiring hall. The union objects to enforcement, arguing that its refusal to supply those records did not constitute a breach of its duty of fair representation under section 8(b)(1)(A) of the National Labor Relations Act (NLRA), 29 U.S.C. § 158(b)(1)(A), and contending that the Board's order conflicts with section

401(c) of the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 481(c), which permits a union to keep its membership lists confidential. For the reasons that follow, we enforce the Board's order.

I.

The order under review concerns the efforts of three union members, John Harte, Franklin McMurray and Eugene Clarke (the dissidents), to obtain information concerning the union's hiring hall and referral practices. The union operated its hiring hall through a telephone referral system; members seeking work as well as employers needing workers would call the union, and the union would refer workers to particular jobs. The union maintained daily and monthly "shape-up" and "referral" lists. The former contained names and telephone numbers of persons requesting referrals; the latter contained the names of workers and the employers to whom they were referred. According to the union, workers were referred to jobs in the order in which they called in, taking into account any special qualifications requested by the employer and any worker's preference for certain types of work.

Harte, McMurray and Clarke were founders of a dissident group within the union called "Carpenters for a Stronger Union," and each had been involved in unsuccessful election campaigns against incumbent union officers. At union meetings and in publications distributed to union members, the dissidents objected to various union policies and criticized the performance of several union officers. Some of their concerns related to the operation of the hiring hall. The dissidents maintained that the referral system was unfair and arbitrary, did not allow members to check whether referrals were being administered fairly,

and gave Paschal McGuiness, the union's business manager, and his staff, too much control.

Beginning in the summer of 1982 and continuing into the first half of 1983, the dissidents made several requests of union officials to inspect hiring hall records. The dissidents were concerned that their activities within the union were adversely affecting their referral opportunities. The dissidents, however, were never permitted to inspect those records. Instead, they were shown their individual work cards, which reflected when each had called the union for work and when each had been referred to a job.

In February and March 1983, the dissidents filed unfair labor practice charges against the union, claiming that the union violated its duty of fair representation when it refused their requests to inspect the hiring hall records. In March 1985, the Administrative Law Judge (ALJ) held that the union had violated section 8(b)(1)(A) of the NLRA by arbitrarily refusing the dissidents' requests to inspect the records and by refusing to supply them with information concerning the operation of the hiring hall. In April 1986, the Board affirmed the ALJ's rulings, findings and conclusions, and ordered the union, among other things, to allow its members to "review, inspect, photocopy, or duplicate all hiring hall records." This petition by the Board for enforcement followed.

II.

A union breaches its duty of fair representation in violation of section 8(b)(1)(A) of the NLRA when it arbitrarily denies a member's request for job referral information, when that request is reasonably directed towards ascertaining whether the member has been fairly treated with

respect to obtaining job referrals. See NLRB v. Local 139, International Union of Operating Engineers, 796 F.2d 985, 992-94 (7th Cir. 1986) (hereinafter Local 139). See generally Vaca v. Sipes, 386 U.S. 171, 177 (1967). Unions must "deal fairly" with such requests, Local 139, 796 F.2d at 993, and in resolving disputes over disclosing information the Board must balance the member's need for the information against the union's legitimate interest in keeping the information confidential. See Id. Cf. Detroit Edison Co. v. NLRB, 440 U.S. 301, 314-15 (1979) (union requests for information from employer); NLRB v. Local Union 497, International Brotherhood of Electrical Workers, 795 F.2d 836 (9th Cir. 1986) (hereinafter Local 497) (employer request for hiring hall information).

The union argues that the Board erred in finding that the dissidents had a good faith reason for seeking the hiring hall records, contending that the dissidents' requests should be considered within the context of their efforts to gain elective office within the union. The union claims that the dissidents requested the information in connection with their intra-union political activities and maintains that the union justifiably rejected their demands since the leadership was properly elected. We disagree. Characterizing this dispute solely as part of the dissidents' attempt to wrest control of the union from the incumbents would unnecessarily constrict the rights of members seeking union office and penalize them for exercising activities that are protected under the NLRA. See 29 U.S.C. § 158(b)(1)(A). Even if the dissidents had political purposes for the information, the union could not deny their requests as long as the dissidents were also motivated by a reasonable belief that they were being treated unfairly by union officials in connection with work assignments. See NLRB v. Leonard B. Herbert, Jr. & Co., 696

F.2d 1120, 1126 (5th Cir.), cert. denied, 464 U.S. 817 (1983); Utica Observer-Dispatch, Inc. v. NLRB, 229 F.2d 575, 577 (2d Cir. 1956).

The union's arguments challenging the dissidents' motives do not require extended discussion, and only two arguments warrant any discussion at all. The union claims that McGuiness' determination that the dissidents had received their "fair share" of work was a satisfactory response to their requests for information. McGuiness, however, only reviewed the dissidents' individual work records. That investigation could not have addressed the dissidents' concern that they were being treated unfairly as compared to other workers because McGuiness did not anlayze the job referral records of any other persons using the hiring hall. In any event, a union is not permitted to refuse a request for information based on its own determination that the grievance underlying the request is non-meritorious or that the information sought is not essential. Cf. NLRB v. Associated General Contractors, 633 F.2d 766, 771-72 (9th Cir. 1980), cert. denied, 452 U.S. 915 (1981). If the request is made in good faith, members are entitled to receive the information and determine for themselves whether they have a claim that the union has discriminated against them.

The union also notes that McMurray, who ran against McGuiness in a June 1983 election, attempted to obtain the names and addresses of union members by recording this information without the union's knowledge or consent. The ALJ properly found that this event did not affect McMurray's good faith basis for seeking the hiring hall records because it occurred after he had made almost all of his requests. Moreover, as the Board points out, the hiring hall information "would not have done [the dissi-

dents] much good" in their political activities because the referral lists contain information concerning only 700 to 800 of the union's 3200 to 3500 members.

The record in this case contains ample evidence that the dissidents' requests for hiring hall records were based on a good faith belief that they were being treated unfairly. For example, almost all of the dissidents' requests were made while they were unemployed and awaiting referral and while union officials were announcing that there was 100% employment among the membership. There was also evidence that the dissidents' work cards contained incorrect information and that the dissidents were offered referrals to jobs outside of their specialties when the union had apparently just referred other workers to jobs in those specialties. We therefore conclude that there is "substantial evidence on the record considered as a whole" to support the Board's finding that the dissidents had a good faith basis for requesting the hiring hall records. Universal Camera Corp. v. NLRB, 340 U.S. 474, 493 (1951).

The union also argues that its denial of the dissidents' requests was not arbitrary and therefore did not constitute a breach of its duty of fair representation. The union notes that it is not required to honor all requests for information, but need only "deal fairly" with such requests, see Local 139, 796 F.2d at 993, and claims that its denial of the dissidents' requests to inspect hiring hall records was reasonably based on its desire to protect confidential information. The ALJ found, however, that the union's claims of confidentiality were only an "afterthought," and that they were "entirely specious and pretextual." He noted that the union did not have a formal or written policy of confidentiality with respect to this information. In

fact, union officials admitted that they had "no guidelines or precedents" for responding to requests for information.

By contrast, there was substantial evidence that the union did not consider this information to be confidential. McGuiness stated at union meetings that job referral lists were available for anyone to examine, and Article VII, section 1, of the collective bargaining agreement then in effect between the union and the employer associations required the union to "establish and maintain an open employment list." It is also significant that union officials never raised their confidentiality concerns with the dissidents as a reason for denying their requests, and that the union did not offer any evidence that its members sought to keep this information confidential.

On this record, the Board could properly determine that the dissidents' interest in assuring the protection of rights that they reasonably suspected were being violated outweighed any legitimate interest the union had in keeping the hiring hall records confidential. See Local 139, 796 F.2d at 992-94. Accordingly, we affirm the Board's holding that the union violated section 8(b)(1)(A) by arbitrarily denying the dissidents' reasonable requests to inspect hiring hall records.

III.

The union also attacks the scope of the Board's remedy. It claims that the dissidents, through their requests for hiring hall records, should not be allowed to obtain information concerning the membership that they are not otherwise entitled to receive. This argument is based on section 401(c) of the LMRDA, 29 U.S.C. § 481(c), which requires labor organizations to,

> comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's

> expense campaign literature in aid of such person's candidacy to all members in good standing of such organization. . . .

and gives every bona fide candidate for office,

> the right, once within 30 days prior to an election . . . to inspect a list containing the names and last known address of all members. . . .

Under the LMRDA, a union may keep its membership lists confidential if it complies with the requirements set out in section 401(c) and if it treats all candidates for union office equally in denying requests for the lists. See Schultz v. Radio Officers' Union, 344 F. Supp. 58, 67-69 (S.D.N.Y. 1972); Conley v. Aiello, 276 F. Supp. 614, 616 (S.D.N.Y. 1967). The union claims that it has never allowed any such requests and argues that the Board failed to construct a remedy that adequately considered the union's right, under the LMRDA, to keep its membership lists confidential.

The LMRDA, however, only regulates intra-union election campaigns and does not prohibit a union from granting more extensive disclosure than the minimum the statute requires. It would be anomalous to conclude that the LMRDA, a statute designed to protect union members from potential abuse by union officials, see Marshall v. Local Union 478, Laborers' International Union, 461 F. Supp. 185, 188 (S.D. Fla. 1978), prohibits a union from disclosing names, addresses and telephone numbers of union members where, as here, such information is necessary to determine whether the union has violated a worker's rights. See Local 139, 796 F.2d at 992-993; Local Union 497, 795 F.2d at 838. See also Conley v. United Steelworkers of America, Local Union No. 1014, 549

F.2d 1122, 1125 & n.4 (7th Cir. 1977); Local 324, International Union of Operating Engineers, 226 N.L.R.B. 587, 599 n.34 (1976) (LMRDA does not "delimit[ ] the scope of a union's obligation to furnish information to the employees it represents").

We also reject the union's contention that the portion of the Board's order permitting the dissidents to copy addresses and telephone numbers of members using the hiring hall was overbroad. The dissidents will need this information to verify the accuracy of the hiring hall records. Although it is conceivable, as the union now suggests, that the Board could have provided the same relief and kept the information confidential by having union employees check the information, considering the animus between the union and the dissidents in this case we cannot say that the Board abused its broad discretion. Lipman Motors, Inc. v. NLRB, 451 F.2d 823, 829 (2d Cir. 1971), in ordering a remedy that would enable the dissidents to verify the records. See NLRB v. International Brotherhood of Electrical Workers, Local 575, 773 F.2d 746, 750 (6th Cir. 1985).

The Board's order is enforced.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL--CIO (Various Employers)

and

JOHN HARTE, an Individual	Case 2--CB--9767
FRANKLIN McMURRAY, an Individual	Case 2--CB--9811
EUGENE CLARKE, an Individual	Case 2--CB--9812

DECISION AND ORDER

On 26 March 1985 Administrative Law Judge Steven B. Fish issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and

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[1] The General Counsel has excepted to the judge's inadvertent failure to conform his recommended Order to his findings. We have modified the recommended Order and notice accordingly.

Because this case involves an exclusive hiring hall, we find it unnecessary to consider, and do not rely on, the judge's discussion concerning a union's obligation in operating a nonexclusive hiring hall.

orders that the Respondent Carpenters Local 608, United Brotherhood of Carpenters and Joiners of America, AFL – CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 1(a) and (b).

"(a) Denying employees whom it represents in collective bargaining the right to review, inspect, photocopy, or duplicate all hiring hall records (on payment of reasonable costs), or refusing to provide such employees information, on request, with regard to the operation of its hiring hall, where such information or request is related to an alleged failure to properly refer such employees because said employees engaged in intraunion political activities or other protected concerted activities.

"(b) Arbitrarily denying employees whom it represents in collective bargaining the right to review, inspect, photocopy, or duplicate all hiring hall records (on payment of reasonable costs), or refusing to provide such employees information, on request, with regard to the operation of its hiring hall where such information or request is related to an alleged failure to properly refer such employees."

2. Substitute the following for paragraph 2(a).

"(a) Honor requests by Eugene Clarke, Franklin McMurray, and John Harte to inspect, review, photocopy, or duplicate all hiring hall records (on payment of reasonable costs), and provide such employees information on request with regard to the operation of its hiring hall, where such requests are related to the alleged failure to properly refer such employees, including but not limited to those requests made by letter in February 1983."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C.

30 April 1986

Donald L. Dotson, Chairman

Patricia Diaz Dennis, Member

Wilford W. Johansen, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT deny employees whom we represent in collective bargaining the right to review, inspect, photocopy, or duplicate our hiring hall records (on payment of reasonable costs), or refuse to provide such employees information on request, with regard to the operation of our hiring hall, where such information or request is related to our alleged failure to properly refer such employees because said employees engaged in intraunion political activities or other protected concerted activities.

WE WILL NOT arbitrarily deny employees whom we represent in collective bargaining the right to review, inspect, photocopy, or duplicate our hiring hall records (on payment of reasonable costs), or refuse to provide such employees information with regard to the operation of our hiring hall, where such information or request is related to an alleged failure to properly refer such employees.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL honor requests by Eugene Clarke, Franklin McMurray, and John Harte to inspect, review, photocopy, or duplicate our hiring hall records (on payment of reasonable costs), and provide such employees information, on request, with regard to the operation of our hiring hall where such requests are related to our alleged failure to properly refer such employees.

CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL--CIO

_____

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any question concerning this notice or compliance with its provisions may be directed to the Board's Office, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 3614, New York, New York 10278, Telephone 212--264--9360.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
BRANCH OFFICE
NEW YORK, NEW YORK

CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO (VARIOUS EMPLOYERS)

and Case No. 2-CB-9767

JOHN HARTE, An Individual

and Case No. 2-CB-9811

FRANKLIN McMURRAY, An Individual

and Case No. 2-CB-9812

EUGENE CLARKE, An Individual

Sandra Grossfeld, Esq. and *Stephen Appell, Esq.*, New York, NY for General Counsel.
Ira Sturm, Esq. (Manning, Raab, Dealy and Sturm), New York, NY for Respondent.[1]

DECISION

Statement of the Case

STEVEN B. FISH, Administrative Law Judge: On February 22, 1983[2] John Harte, herein called Harte, filed a charge in Case

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[1] During the trial of the instant matter, Respondent was represented by David Lew, Esq. of Bart & Lew, New York, NY. The above cited firm was substituted as counsel subsequent to the close of hearing and filed a brief on behalf of Respondent.

[2] All dates hereinafter, unless otherwise indicated are in 1983.

No. 2-CB-9767, against Carpenters Local 608, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, herein called Respondent, alleging violations of Section 8(b)(1)(A) and (2) of the Act by failing and refusing to provide Harte with names, addresses and telephone numbers of persons who have applied for or been given referral to employment by Respondent within the past six months.

On March 22, Frank McMurray, herein called McMurray, filed a charge against Respondent in Case No. 2-CB-9811, alleging an 8(b)(1)(A) violation of refusing to provide McMurray with the number of names on its job lists, because McMurray and another member of Respondent filed charges with the Board. The charge also contains a "by these others acts" clause.

On March 23, Eugene Clarke, herein called Clarke, filed a charge against Respondent in Case No. 2-CB-9812, alleging 8(b)(1)(A) and (2) violations by refusing to allow Clarke to inspect and examine the referral lists of Respondent containing the names, addresses and phone numbers of persons who had requested referrals, and by discriminating against Clarke with respect to job referrals, because he engaged in concerted activity protected by Section 7 of the Act.

On April 29, the Director for Region 2 issued an Order Consolidating the above cases along with a Complaint and Notice of Hearing, alleging that Respondent violated Section 8(b)(1)(A) of the Act, by failing and refusing to provide Harte, McMurray and Clarke with names, addresses, and telephone numbers of all persons who have asked to be referred or have their names placed on the list by Respondent for referral, dates of such request, the identity of each person referred and dates of each referral, where they were referred, dates of hire, layoffs or discharge.[3]

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[3] The 8(b)(2) portion of the charges filed by Harte and Clarke were withdrawn. McMurray as noted did not allege 8(b)(2) violations in his charge.

A hearing was held before me with respect to the allegations in said complaint in New York, New York on December 12, 20, 21 and 22, 1983 and April 10 and 11, 1984. Briefs have been received from Respondent and General Counsel and have been duly considered.

Upon the entire record,[3A] including my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. Jurisdiction

Building contractors Association Inc. (BCA), and the Cement League, herein collectively called the Associations, are associations of employers engaged in the construction and building trades, and which exist for the purposes of representing their employer-members in collective bargaining and negotiating and administering collective bargaining agreements with labor organizations, including the District Council of New York and Vicinity of the United Brotherhood of Carpenters and Joiners of America, herein called District Council and Respondent.

Annually, the employer-members of each of the Associations, in the course of their business operations, collectively, purchase goods and materials valued in excess of $50,000 directly from firms located outside of the states wherein said employer-members are located.

It is admitted and I find that each of the Associations, and their respective employer-members, are now, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

It is also admitted and I so find that Respondent is now, and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

[3A] General Counsel's unopposed Motion to Correct the Transcript is hereby granted, as set forth in Appendix B.

II. Facts

A. Respondent's Hiring Hall Procedures

At all times material herein, Respondent has been a constituent member of the District Council, which includes all Local Carpenter Unions within the City of New York. For a number of years Respondent as a constituent member of the District Council, was a party to a series of collective bargaining agreements with the various associations covering employees falling within the jurisdiction of Respondent.

A collective bargaining agreement running from July 1, 1981 to June 30, 1984, was executed by the parties, and was binding upon and enforced and maintained by Respondent during this period of time.

The contract contains the following provisions:

Article VI Section 2 of the agreement provides:

> The first Carpenter on the jobsite shall be referred by the Union. The Second Carpenter shall be the Employer's selection. The balance shall be 50% from the Union and 50% from the Employer. The Union will cooperate, in order to meet all legal requirements, and furnish qualified Carpenters when requested. A working Job Steward shall be appointed by the Union . . .
>
> When a Employer, in compliance with this Section, requests the District Council to send men to a job, the District Council shall cooperate by sending only such as are experienced in the specific type of carpentry work being done on the said job by that Employer. There shall be no discrimination of any kind against any person covered by this agreement, based on race, religion, age, sex, national origin or Union affiliation with respect to hiring, firing, or any other conditions of employment.

> Article VII, entitled "Job Referral System, provides that:
>
> In the referral of applicants by the Union for employment as provided for in Article VI, Section 2, by the following provisions shall govern:
>
> Section 1. The Union shall establish and maintain an open employment list for the employment of competent workmen. This list shall be established and maintained on a non-discriminatory basis and shall not be based on, or in any way affected by race, creed, color, nationality, age, sex, or Union membership, by-laws, rules, regulations, constitutional provisions of any other aspect or obligation of Union membership, policies or requirements.

Prior to 1979 in connection with the implementation of the referral procedure set forth above, Respondent had operated a hiring hall wherein applicants would shape-up at Respondent's offices on a daily basis. Sometime in early 1979, Respondent had a fire at its premises, which the landlord allegedly blamed on Respondent's use of its "dayroom", which was utilized by it for shaping up by applicants. Accordingly by a letter dated August 9, 1979, Respondent announced that as of August 20, 1979 it would no longer utilize a shape-up system. The letter explained that the landlord had claimed that Respondent was violating its lease by allowing a dayroom and requested its discontinuance. Additionally, the letter asserted that Respondent's Executive Board felt that the present system was wasteful and expensive to the membership, and decided to adopt a call in system, similar to the practice of other carpenter locals in the area.

The system instituted by the August 1979 letter was still in effect as of the hearing herein, which requires applicants to call in to Respondent between 2:30 and 3:30 p.m. to request a referral. The applicant must provide his name, telephone number and Ledger Page number. Applicants are told to be available at the given telephone number between 7:00 a.m. to 9:00 a.m.

in the morning, when representatives of Respondent contact them to notify them of a possible referral. Employers can call the Respondent to seek employees at anytime. Consequently it sometimes becomes necessary for Respondent's agents to call applicants and offer them jobs of the day or evening, other than from 7:00 to 9:00 a.m.

Respondent maintains three different sets of documents in connection with the operation of its referral system. When an applicant first calls in to use the hiring hall, a 5"8" identification card for each member, sometimes referred to as a worksheet or work card is prepared. These cards or worksheets contain the applicants name, a telephone number where he can be reached, his Ledger Number, and his specialty, if any.*

Respondent also utilizes a shape-up list, which is maintained on a daily basis and maintained thereafter in a monthly folder. Each daily page of the shape-up list contains the name of other employees requesting shape-up, his or her ledger page number and telephone number. Respondent also maintains referral lists which are similarly maintained on a daily basis and thereafter in monthly folders. The referral lists, through the end of 1982, were made up of two columns, the first column containing the name of the Employer to whom referral was made and the job location, and the second column indicating the name of the employee or employees referred to that particular job. In 1983, the referral list added two additional columns, entitled "specialty" and "requested". Each page bears a date, but no times of call-ins or referrals are listed on any of the records.

Paschal McGuiness, Respondent Business Manager, is Respondent's chief operating official, with four assistant representatives reporting to him. John Boyle, one of these assistant business representatives, was assigned by McGuiness the responsibility of maintaining the above described hiring hall records. Other

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* In the industry, carpenters perform a variety of specialty work such as "finish, dry wall, ceilings and concrete". Employers will frequently request employees to perform these specialties. Many carpenters usually look for work only in the specialties, and will not accept work in other specialties.

assistant business representatives such as John F. O'Connor, Martin Ford, and John Keane, are also involved in the process of operating Respondent's hiring hall system.

When applicants call in to request a referral, as noted, a card or worksheet is made up for them. Each time an applicant calls for a referral, one of the Respondent's officials places a "C" on his worksheet, or card and places his name on the shape-up list. The card of the applicant is then placed on the wall in the order of their calling in. Referrals are made according to Respondent's officials, in order from the shape-up list or from the cards on the wall, taking into consideration the specialty that may be requested by the Employer, as well as the preferences of the particular carpenter for performing certain types of work, as appears on his records.

If Respondent is unable to contact the applicant, a notation of "N" is placed on his card. If the person is contacted and refuses a referral an "X" is placed on his card. If the person refuses a referral and provides an explanation, such a illness, an "XX" is placed on his card. In either event, a person is not penalized for either refusing a job or not being home when called, and he retains his place on the list. Respondent will then go down the list of names until the job is filled, sometimes even calling back an applicant who it had been unable to reach earlier.

When an applicant is referred an "R" is placed on his card. If an applicant obtains his own job, he is supposed to call in and notify Respondent of same, in which case a "W" is placed on his card. Then the applicant will not be called until he again calls when that job is completed and requests a referral, and his name is again placed on the shape-up list, and "C" is marked on his card.

Boyle testified that Respondent has approximately 3,200 to 3,500 members, and of that number 700-800 use its hiring hall on an annual basis. The remaining over 2,000 members, according to Boyle obtain jobs on their own. As noted Respondent's contracts with the two Associations provide for a hiring procedure, wherein the first carpenter on the jobsite shall be

referred by Respondent, the second shall be the Employer's selection, and the remaining employees, 50% from each source. No evidence was adduced on this record, and these requirements have not been adhered to by the parties.

B. Dissident Activities of the Charging Parties

It is undisputed that Harte, McMurray and Clarke (herein called collectively the charging parties), are and have been well known Union dissidents for several years. Harte's problems with Respondent began as far back as 1973, when he was denied admission into Respondent upon his attempt to transfer from another Local and filed a lawsuit to gain admission. In late 1981, the three members met and discussed various complaints that they had about the operations of Respondent, and formed a dissident group named "Carpenters for a Stronger Union". Clarke was president, McMurray Vice President and Harte was Coordinator of this group. During 1982 the individuals began to complain at Respondent's meetings about various union policies, as well as speaking to various carpenters about their concerns.

Some of their main complaints were the lack of a shape-up room, Respondent's pension plan, an alleged lack of democracy in the Local, as well as alleged corruption among its officials.

During 1982 as well as in early 1983, the group prepared, published, and distributed anti-incumbent literature at union meetings, jobsites and at the union hall. This literature included newsletters entitled *On the Level*, and *The Rusty Nail*. These documents were highly critical of Respondent's operations in general, and its officers and officials in particular. A number of the newsletters accused Respondent's representatives of corruption, emphasizing their relationship with Theodore Maritas, president of the District Council, who was indicted on various Federal criminal extortion charges, disappeared before a trial could be held and was believed to have been killed.

These newsletters also criticized the allegedly high salaries, and benefits of Respondent's business agents, as well as business manager McGuiness. Respondent's failure to have a dayroom

or shape-up hall was also emphasized, where it was suggested in answer to Respondent's alleged concerns for the expense of such a hall, that Respondent could afford to have a dayroom by merely eliminating the salary of a business agent. A number of the newsletters dealt with the hiring hall issue, contending that the present telephone system was unfair, and arbitrary, and affords the business agents too much control over hiring, while not affording the member sufficient opportunity to check to see if he is being discriminated against or to decide whether or not to turn down a job that he might not want.

Additional areas of criticism in these publications included the Respondent's pension plan, apprentice system, and policies with regard to dues and assessments.

All three of the charging parties were involved in election campaigns against the incumbent administration. In June of 1982, Harte ran for Trustee on an opposition slate to the then present leadership. He was defeated and appealed the results to the International, but never received an answer to his appeal. Clarke attempted to run for Local President, but was not permitted to run for office, because he had been suspended from Respondent's meetings because of his alleged disruptive conduct at meetings.[5]

McMurray unsuccessfully opposed the incumbent business manager McGuiness in the June 1983 election, receiving approximately 12% of the votes. Harte and Clarke acted as the observers for McMurray at this election. McMurray challenged the results of the election to the International claiming certain alleged election irregularities by the incumbent slate of officers. His appeal was turned down by the International.

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[5] Clarke was nominated for the position of president by Harte to run against incumbent John J. O'Connor at the May 1982 meeting. O'Connor who was chairing the meeting rejected the nomination, because it was allegedly contrary to Respondent's Constitution. O'Connor then realizing that he himself was a candidate for President, relinquished the chair to McGuiness who made the same decision and did not accept the nomination of Clarke.

The record reveals several instances of animus displayed by Respondent's officers towards some of these activities engaged in by the charging parties. Thus at Respondent's meeting of October 8, 1982, McMurray made some critical comments about Respondent's policies and made a motion to end a 15 cent assessment. Immediately McGuiness asked for the floor. He then proceeded to criticize the "small group or minority that is printing garage and passing it out." He referred to the publications being passed out as "deliberate lies", and "indecent pieces of literature that are being handed out", stated that he was "telling your Brothers to ignore this garbage if you have decency at all." He also at a further point in his remarks asked the members, not to "be like this small minority group, do not lower yourself to their class."

At a Union meeting on February 28, 1983, McMurray raised a question about the hiring hall list. John J. O'Connor interjected angrily that since he and Harte had filed charges against Respondent at the NLRB, that Respondent would not answer any questions about the job list.[6] O'Connor then read a letter from Respondent's attorneys congratulating the Local and its officers for their professional manner in keeping their referral lists, which were utilized in connection with the defense of a prior charge, filed and withdrawn by Clarke with the Board.[7]

McGuiness then remarked that members who bring charges to the Labor Board cost the Local money, because they have to pay for lawyers.

Later on in the meeting, McMurray spoke regarding the salaries of business agents. John F. O'Connor interrupted and called McMurray an "ungrateful bastard", and refused to permit

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[6] In fact as of that date Harte and not McMurray had filed charges with the Board.

[7] The letter referred to Case No. 2-CB-9630, which apparently involved a challenge by Clarke to the hiring hall. The record is silent as to the precise details of this charge or when it was filed or withdrawn.

him to continue speaking. O'Connor also added that Harte and McMurray had brought charges with the NLRB and that they were "bastards trying to destroy the Union."

At the next meeting, McMurray objected to the acceptance of the minutes because neither of the above comments of O'Connor nor McGuiness were reflected therein. McMurray's objections were ignored and the minutes accepted.[8]

Finally, on or about January 25, 1983 Harte was distributing dissident literature at Respondent's offices. Martin Ford, one of Respondent's business agents told him to leave the premises, stop distributing literature and that he had no business being there. Ford added that if Harte distributed any more literature Ford would have him beaten up.[9]

The next day Harte returned to Respondent's offices with McMurray and began to hand out more literature to members. John F. O'Connor approached and told them to stop handing out literature, and if not he would have them arrested. The men then left the premises.[10]

C. The Efforts of the Charging Parties to Obtain Hiring Hall Information

At nearly every monthly meeting held by Respondent between May through December 1982, either or both John F. O'Connor or McGuiness made comments to the membership that the Local had 100% employment, and/or that work opportunities were plentiful. In fact at the October 18, 1982 meeting, McGuiness stated in response to a question by McMurray about the employment situation that Respondent "had better than 100% employment in this the best local union in the United Brotherhood."

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[8] The above from the uncontradicted testimony of Harte and McMurray.

[9] Based on the credible testimony of Harte. Ford did not testify, but the parties stipulated that if he were called to testify he would deny making any threats to Harte. I credit Harte.

[10] Based on the essentially mutually corroborative testimony of Harte and McMurray.

In July 1982, Harte made the first of a number of oral requests to inspect the hiring hall lists. He made these requests on a number of occasions during the months of July through the end of September. Whenever Harte was out of work, during this period he would call and ask that his name be placed on the referral list. When after not receiving referrals for a short period of time thereafter, and hearing at meetings of 100% employment, Harte asserts that he wanted to see the list to see where he stood. Harte would ask either O'Connor, Tom O'Kelly or McGuiness to see the hiring hall list. They responded that he (Harte) will be called for employment, but would not show him the list.

On October 12, 1982 McMurray called into the hiring hall and requested that his name be placed on the referral list. By October 18, he had not been offered a job, although he had been told by other carpenters that there was a lot of work at the time in "finishing", which was his specialty. McMurray was also concerned that since he had been speaking up at meetings, that this may have adversely affected his referral opportunities.[11]

McMurray concluded that he wanted to check and see if was getting his fair share of work. Therefore at the October 18 meeting, he asked whether Respondent kept a job list and whether the members were entitled to see it. McGuiness replied that the Local does keep a job list, and that any member could see if any time that they wanted.[12]

On the day following the meeting, October 19, Harte, McMurray, Clarke and a fourth member, Jerry McDonough went to the Respondent's office to see the hiring list. Harte and McMurray at first saw John F. O'Connor and asked him to see the job list. O'Connor returned with their work cards. They

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[11] McMurray had been told by other members that if he spoke up at meetings, he would not get work.

[12] Based on the testimony of McMurray, substantially corroborated by Harte, and not denied by any of Respondent's witnesses.

insisted that this was not sufficient and again asked to see the job list. O'Connor replied that if they wished to see anything else other than their work cards, they would have to see McGuiness.

A few hours later Harte, McMurray and Clarke each saw McGuiness individually.[13] McMurray asked McGuiness to see the job list, and reminded him of the fact that he had said at the meeting that all members could see the job list whenever they wanted to. McGuiness replied that he couldn't show McMurray the list, and mentioned that McMurray was a family man and needed to support his family. McMurray again requested to see the list. McGuiness continued to refuse to show it to him, and did not provide him with an explanation for not doing so, although McMurray asked why he couldn't see it. Finally McGuiness asked McMurray if he wanted a job. McMurray said yes, and McGuiness referred him to a job which lasted five hours.

Harte, who at the time was also out of work,[14] and awaiting referral from Respondent's hall, asked McGuiness where he stood on the list. McGuiness showed him his work card, and explained to Harte the various codes appearing therein, which indicated that he had been called on certain days and was not home and that he had refused a job. Harte replied that he never refused a job and that he was always home, so that the cards were not accurate.

Harte again asked where he stood on the list, saying that his card was not meaningful since it did not show his position on the list relative to others. McGuiness answered that he (Harte) was a smart fellow and had a family to support. Harte continued that he didn't want a lecture, but just wanted to see the

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[13] The fourth member who accompanied the charging parties, McDonough, did not wait around to see McGuiness and left the premises.

[14] According to Respondent's record card, Harte had called in for referral on 10/8/82.

list. McGuiness concluded that he "can't show" Harte the list, and that Harte would be getting a job in a few days. Harte was referred by Respondent to a job, a few days later.

Clarke, who was also not working on that day,[15] asked McGuiness to show him the hiring hall list. McGuiness instead showed him his card and began to explain it to Clarke. Clarke said that he knew about the card, but that was not helpful to him since it did not show where he was on the list and who was ahead of him, and he wished to see where he stood. McGuiness responded that he couldn't show Clarke the list and gave no reason for not doing so.

Thereafter at a number of subsequent membership meetings, McMurray asked why members were not allowed to see the job list. McGuiness responded by stating how democratic the Local was, but did not reply to McMurray's question.

McMurray after being referred to a five hour job by McGuiness on October 19, protested to the hall that this was only five hours work. A day or two later Ford called him and referred McMurray to a job for Nastasi White, which lasted for one day. McMurray then obtained his own job for a firm called Amberg which lasted from November 1982 through the end of January 1983.

Harte was laid off from a job on January 23, 1983, and called in to place his name on the list. On January 25, he went to Respondent's premises and asked John F. O'Connor to see the list. O'Connor replied that Harte could not see the list. At that point Harte decided to remain and distribute dissident literature to the members. On that day, as set forth above, Ford threatened to have Harte beaten up if he distributed any more literature.

The next day, January 26, 1983, Harte asked McMurray to accompany him to the hall, in view of his being threatened the day before. They spoke to Tom O'Kelly, Respondent's Financial Secretary, and asked to see the job list. O'Kelly replied that

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[15] Respondent's record shows that Clarke had called in on 10/13 to place his name on the list.

he could not show them the list. McMurray and Harte then began to again distribute literature. O'Connor then came out and told them to leave the hall and stop giving out literature or he would call the police. At that point McMurray took out a camera and took a picture of O'Connor. McMurray explained that he originally took the camera with him in case there was any violence, he would be able to record it, since Harte had informed him of the threat by Ford the day before. Although admittedly O'Connor did not engage in any violence on January 26, and merely ordered them to leave, McMurray testified that he decided to take a picture of O'Connor any way, since it might eventually be useful for their dissident publications.

McMurray and Harte again went to the hall on February 9 and asked O'Connor to see the job list. O'Connor again refused. Shortly thereafter, in mid-February 1983, Harte and McMurray after consulting with an attorney, sent identical letters to Respondent in care of McGuiness. The letters read as follows:

> I am a member of Carpenters' Local 608, UBC&J, and I seek work through its job referral procedures. I have good faith reason to believe that I have been and am being discriminated against by Local 608 in job referrals.
>
> In order to determine whether I have been or am being discriminated against, I seek information concerning the identity of persons on the Local 608 job referral list(s), and of the persons who have been referred to jobs, as well as the dates the persons who have referred to jobs, as well as the dates of referral, dates of hire, and dates of last preceding discharge.
>
> Please forward to me by return mail the names, addresses and telephone numbers of all persons who, during the past six months have asked to be referred to jobs by Local 608 or have asked that their names be placed on a list for job referral, together with:

(a) the date or dates of each request;

(b) the date or dates of each subsequent referral of such person to a job, including the name of the person so referred, the name of the employer to whom referred, and identification of the jobsite to which referred;

(c) the date or dates of each hire and of any subsequent layoff or discharge, including the name of the person hired and/or laid off, the name of the employer and identification of the jobsite.

I shall of course be prepared to pay a reasonable cost for reproducing the information requested.

By identical letters dated February 24, 1983, McGuiness replied to Harte and McMurray, asking them to contact McGuiness in order to set up a meeting, "so that we may review documentation that may be appropriate to your inquiry."

On April 6, 1983 a meeting was held pursuant to these letters. Present were McGuiness, McMurray and Harte. They asked McGuiness to see the job list. McGuiness took out and showed them their work cards, and explained that they showed that the men had received their fair share of work. McMurray responded that he objected to the accuracy of the cards, claiming that he was home on days that showed he had been called. McMurray again insisted on seeing the job list, which is required by the contract.[16] McGuiness repeated that McMurray had gotten a fair shake at the hall and that he was working steady, and that he would not be shown the job list. McGuiness did not mention anything about any of the job records or any part thereof being confidential. The meeting then ended.

The very next day McMurray received a call from John F. O'Connor offering him a job at LaGuardia Airport. McMurray refused this job, telling O'Connor that it was not a

[16] The contract as noted requires the Union to "establish and maintain an open employment list."

"finishing" job, which was his speciality, and that he also had no transportation to the Airport.

On or about February 23, 1983, Clarke was called by John Boyle from Respondent and offered a finish job, although his speciality is ceiling work. Clarke refused this job, since he did not have any finish tools. That very morning however, Clarke had been told by a fellow member, that he plus four others were dispatched from the hall that morning for ceiling jobs.

In mid-March Clarke, who was not working at the time, went to Respondent's office and asked John F. O'Connor to see the list. O'Connor responded that Clarke couldn't see the list, and the conversation ended.

In May of 1983, Clarke ascertained that a Company called Duncan Interiors was hiring employees. He then called the Company, and was told the Company needed a good mechanic such as Clarke, and would hire him, but that he had to get approval from the hall. Clarke then called Respondent and informed John F. O'Connor of his conversation with the Duncan official. O'Connor replied that Respondent had already dispatched two men to that job. Although Clarke admitted that he had just been laid off from another job, and had not as yet placed his name on Respondent's list, he still felt that this was his job and he was being circumvented by the Union; and that he felt his rights to get his own job from management was being restricted.[17]

Therefore Clarke went to the hall to try to find out who was sent out in his place to Duncan. He saw McGuiness and complained that he was being "put upon", and was unhappy about the fact that he was told that he needed clearance from Respondent to obtain a job he had gotten on his own. McGuiness explained that the Employer had already called in for men and that Respondent had dispatched two men to that job. Clarke then asked to see the job list to ascertain who had been sent

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[17] I note that the contract provides that 50% of the jobs at a jobsite can be filled by management.

out in his place. McGuiness refused to show Clarke the list nor tell him who had been sent out to this job.[18]

The above findings with respect to the various requests to see the job referral lists of Respondent by the charging parties, is based on a compilation of what I believe to be the credible testimony of the charging parties and Respondent's witnesses, O'Connor and McGuiness. While much of the evidence is essentially undisputed and agreed upon, there are some areas where conflicts in testimony do exist. For the most part I have credited the testimony of the charging parties over that of Respondent's witnesses where it was necessary to resolve such conflicts. On balance I found the charging parties to be more candid and credible than Respondent's witnesses.

I was most impressed with charging party Clarke, who appeared to me to be the most believable of all of the witnesses herein, and who freely admitted facts which might adversely affect his position. Thus for example he divulged that he had not signed up on Respondent's hiring hall list when he made his request to see the list in May of 1983.

On the other hand I was most unimpressed with McGuiness as a witness, who was frequently evasive and argumentative in a number of his responses. This was true in some particularly significant areas of his testimony, such as whether Respondent had a policy in regard to permitting members to see the job referral lists.

Respondent defends its decision not to show the referral lists to the charging parties essentially through the testimony of McGuiness and Boyle. These explanations related specifically to the requests made in writing and orally by Harte and McMurray in February and April 1983, as McGuiness denied that any

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[18] I note that Clarke had no way of knowing whether the men who had been sent out to this job were on the hiring list as contended by Respondent, nor whether the 50-50 ration set forth in the contract was being adhered to with respect to these referrals.

similar requests were made at other times.[19] O'Connor who also testified on behalf of Respondent admitted that in October 1982 and February 1983, he received requests from Harte and/or McMurray to see the referral lists, that he showed them then work cards instead, and that he would not show them the lists. O'Connor testified that he refused to show them the list although he had not discussed the matter with McGuiness, nor was he aware of any Union policy with respect to such requests. When asked why he did not show the list to a charging party, O'Connor's response was "his card was sufficient."

Insofar as McGuiness and Boyle are concerned they corroborate each other's testimony that after the February letters of Harte and McMurray were concerned, McGuiness instructed Boyle to bring in their individual worksheets, as well as requesting District Council Fringe Benefit reports. Based upon their review of these documents, Boyle and McGuiness testified that they concluded that Harte and McMurray had both received their fair share of work from Respondent. McGuiness also allegedly mentioned that he felt that the telephone numbers of members were confidential. McGuiness then decided that the men would not be allowed to see the referral lists. McGuiness asserts that in his view Harte and McMurray had been "working steady" for the six month period for which they requested information, and further that Respondent has a policy of confidentiality as to addresses and phone numbers. Accordingly, he states that he concluded that the requests made were unreasonable and they would not be shown Respondent's records.

During this discussion and McGuiness' deliberations, Boyle and McGuiness did not check the work cards or District Council records of any other members, nor did they go through the sign in or referral lists. McGuiness also testified that there was no "Union" policy with respect to requests to see the lists by

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[19] As noted I have credited the charging parties that a number of other oral requests were made to various officials of Respondent, including McGuiness.

members, and that no one had ever made such a request before.[20] According to McGuiness, members will frequently come to the hall and ask how they stand on the list, but they are satisfied by Respondent's officials showing them their individual work cards, as was done with respect to the requests herein. McGuiness could not explain how the showing of members their own cards in any way shows how they stand on the list. When asked about this McGuiness then opined that when members make such requests, they are only interested in making sure that there is a record that they called in to the hall.[21]

Insofar as the confidentiality issue is concerned, McGuiness asserts that he became aware of the Respondent's policy against disclosure of members names and addresses when he was told about it in 1967 by another Union official. He claims that has always been the Respondent's policy as far as he knows. However he could not point to the policy being in writing. At one point in his testimony he asserted that Respondent's Constitution sets forth this policy. When pressed further, McGuiness referred to Section 31 of the constitution which relates only to the election procedure of Respondent, and states that qualified candidates shall be permitted to examine membership lists containing names and addresses of members once within thirty days prior to the election.[22]

It is undisputed that Respondent's policy in regard to elections is not to permit unlimited inspection of membership lists.

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[20] With the exception of one retired member, which resulted in a prior NLRB charge and a settlement.

[21] McGuiness admitted however that at times members will be interested in finding out how many people are ahead of them on the list, and that business agents will sometimes furnish that information to the member.

[22] This provision appears to be in compliance with and in response to Section 401(c) of the LMRDA, which requires unions in election campaigns to comply with all reasonable requests of candidates to distribute mail and literature, and that candidates have a right once within 30 days prior to an election to inspect membership list.

The candidates come to the office with their literature, Respondent orally gives them the names and addresses of members, they put them on the envelopes and Respondent's officials accompany the candidates to the Post Office. When McMurray was running for business manager against McGuiness, he met with the election committee pursuant to this procedure. McMurray admitted that he read out loud the names and addresses of members into a hidden tape recorder that he had with them at the time, in order to obtain that information.[23]

Extensive testimony was adduced by Respondent of the charging parties concerning their work records during 1982 and 1983. Additionally, a stipulation concerning this information was also introduced into the record. Respondent also submitted into evidence its work cards and the District Council pension sheets.

The above evidence tends to establish that during the time periods in question herein, more specifically from the summer of 1982 through the spring of 1983, all three charging parties were working for a significant amount of the time. Each of them received a number of referrals from Respondent during this period of time, as well as obtaining a number of jobs on their own. However these records and this testimony do not dispute, and in fact tends to corroborate the testimony of the charging parties that for the most part, when they made their requests to see the lists, they were not employed and had been awaiting referral from the hall.[24]

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[23] The date of this incident is not clear from the record, but it appears to have been at some point shortly prior to the election which was held on June 20, 1983.

[24] I note in this connection that Clarke admitted that he had not called the Respondent in May 1983 when he requested to see the list, but he had been denied a job that he thought he was entitled to receive. McMurray also admitted that he was working in late January 1983, when he accompanied Harte to ask to see the list, pursuant to Harte's request, because Harte had been threatened the day before by Ford. Harte as noted, on the other hand was not working on these days and was awaiting referral.

III. Analysis

A. The Exclusivity of the Hiring Hall

Respondent contends that its hiring hall herein is non-exclusive in nature, because in order for such an arrangement to be considered exclusive, "all" hiring authority must be reserved to the Union. I do not agree.

It is well settled that a hiring is deemed to be exclusive where the Union retains exclusive authority for referrals for some specified period of time such as 24 or 48 hours, before an Employer can hire on its own. *Mountain Pacific Chapter*, 119 NLRB 883 (1957); *Boilermakers Local Lodge 587 (Stone and Webster)*, 233 NLRB 612, 614 (1977); *Local No. 78, United Brotherhood of Carpenters (Murray Walter)*, 1223 NLRB 733, 734,5 (1976). Thus to the extent that that Union retains such exclusive authority during this period, it operates an exclusive hiring hall.

Similarly, an exclusive hiring hall can also exist where an employer has the contractual right to bring in a certain number or percentage of employees onto a job. *Bricklayers Local 8 (California Conference of Mason Contractors Association)*, 235 NLRB 1001, 1003 (1978). Thus the Employers herein have given up and delegated to Respondent the right to hire the first employee on the job and fifty percent of the remainder after the Employer selects a second employee. I conclude that to such an extent an exclusive hiring hall is contemplated by the Agreement. *Heavy Construction Laborers Local 663, AFL-CIO (Robert A. Trenner)*, 205 NLRB 455, 456 (1973).[25]

Since the record is bereft of any evidence that the terms of the contract have not been adhered to, I conclude that to the extent specified, Respondent operates an exclusive hiring hall,

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[25] See also *Carpenters Union Local #25 (Mocon Corporation)*, 270 NLRB #110 (1984), where up to 25% of the employees could be designated by the Employer.

and is subject to the obligations and requirements which flow from such a finding.[26]

B. The Obligation to Permit Inspection of and Supply Information Regarding Respondent's Referral Records

It is well settled that a Union which operates an exclusive hiring hall, breaches its duty of fair representation in violation of Section 8(b)(1)(A), when it arbitrarily denies requests of its members for job referral information, where such requests are reasonably directed towards ascertaining whether such members have been properly treated in connection with the operation of said hiring hall. *Local 324, International Union of Operating Engineers, AFL-CIO (Michigan Chapter Associated General Contractor of America)*, 226 NLRB 587 (1976); *Bartenders and Beverage Dispensers' Union, Local 165 (Nevada Resort Association)*, 261 NLRB 420 (1982); *International Brotherhood of Electrical Workers Local 575 (Coleman Electric)*, 270 NLRB #20 (1984), ALJD p. 10, 11.

The Board has found violations with respect to the denials of various types of requests in this connection, such as inspecting the hiring hall lists,[27] copying the lists,[28] or even asking the Union to compile and furnish hiring hall information.[29]

Even where a Union operates a non-exclusive hiring hall, the Board has found that the Union still owes a duty of fair representation towards those who seek to utilize its services. *Bricklayers'*

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[26] The testimony that a majority of Respondent's members do not use the hiring hall at all, and obtain jobs on their own, in no way refutes or contradicts this finding.

[27] *Bartenders Local 165, supra; Fischbach Lord Electric Co.*, 270 NLRB #125 (1984), ALJD at p. 15.

[28] *Local 513, Plumbers (Mechanical Contractors Association of Grand Rapids)*, 264 NLRB 415, 422 (1982); *Local 90, Plasters (Southern Illinois Builders Association)*, 236 NLRB 329, 338 (1978); *Boilermakers Local Lodge 587, supra.*

[29] *Local 324, supra; Local Ohio Valley District Council of Carpenters (Axley and Burch and Lomb Co.*, 255 NLRB 80, 87 (1981).

and Stonemasons' Union Local 8, supra. at 1005-1008; *Local 13, Plumbers' (Mechanical Contractors Association of Rochester)*, 212 NLRB 477, 479 (1974); *Crouse Nuclear Energy*, 240 NLRB 300 (1979).

This duty has been held to have been violated where the Union in an non-exclusive hiring hall discriminatorily refuses its members access to and services of the hiring hall because they have engaged in intra union political activity. *Hoisting and Portable Engineers Local 4 (Carlson Corp.)*, 189 NLRB 366 (1971); *Chauffeurs Union Local 923, IBT (Yellow Cab Co.)*, 172 NLRB 2137 (1968); *Crouse Nuclear, supra.*

The Board has also found the duty of fair representation to have been violated where the operator of a non-exclusive hiring hall refused to permit the utilization of said hiring hall, because of other arbitrary reasons, such as the fact that the applicant was not a union member or because he worked for a non-union contractor, *Local 13, Plumbers, supra*, or because of his non-union status and because he refused to pay a fine to a sister local. *Bricklayers Local 8, supra.*

In the instant case the evidence is more than sufficient to support a finding that the various requests of the charging parties herein were denied, because of activities in opposition to the policies of Respondent and its incumbent officials including their reelection.

The record is clear that all of the charging parties ran or attempted to run for Union office against Respondent's incumbent officials, spoke out at Respondent's meetings, and distributed literature to the membership highly critical of the operation of Respondent in general, and the current leadership in particular.

That Respondent and its officials harbored substantial animus towards the exercise of these protected concerted activities by the charging parties cannot be doubted. Thus at Respondent's October 18 meeting, immediately after McMurray made a critical comment about Respondent's assessment policy,

McGuiness obtained the floor and proceeded to attack the literature distributed by the charging parties as well as the charging parties themselves. McGuiness referred to them as "a small group or minority that is printing garbage and passing it out." He also characterized the publications as "deliberate lies and indecent pieces of literature", and asked the members "to ignore this garbage if you have any decency at all." He concluded by asking the membership not to "be like this small minority group, do not lower yourself to their class."

I would note that this diatribe took place at the same meeting during which McMurray asked about the job list and was told by McGuiness that the Local does keep a list and that any member could see it any time that they wanted. The very next day, as noted Clarke, McMurray and Harte all came to the hall, requested to see the list and were refused, without being given a reason by Respondent.

Additionally at another meeting on February 28, 1983, McMurray raised a question about the list, and was told angrily by John J. O'Connor that since he had filed charges against Respondent with the NLRB, and that Respondent would not answer any questions about the job list. McGuiness then commented that members who bring charges at the Labor Board cost the Local money. Later on in the same meeting, after McMurray criticized the salaries of business agents, John J. O'Connor interrupted and referred to McMurray as an "ungrateful bastard" and refused to allow him to continue speaking. Finally, O'Connor observed that Harte and McMurray had brought NLRB charges and that they were "bastards trying to destroy the Union".

I note that these remarks on February 28, 1983 were contemporaneous with both oral and written requests by the charging parties to see the lists and obtain hiring hall informataion.

Finally, on January 25 and 26, after having been again refused access to the job lists, Harte began to distribute dissident literature to members. On the 25th he was threatened by Ford with being beaten up if he did not desist. On the 26th, along

with McMurray, they were both told by John F. O'Connor that they would be arrested if they continued distributing literature to members.

Thus, the above evidence of animus towards the charging parties for their protected activities, coupled with the fact that McGuiness at the October 18th meeting told the membership that Respondent's job list is available to be seen at any time, leads to the conclusion that the charging parties were treated disparately and discriminatorily with respect to their requests for hiring hall information.

It would seem therefore that the issue of whether or not Respondent operates an exclusive hiring hall, is not crucial to the disposition of the instant matter. What is crucial and in my judgment determinative of the issue of the legality of Respondent's conduct herein, are the questions of the reasonableness of the charging parties' requests, and the validity of Respondent's professed reasons for denying these requests. Indeed as Respondent correctly observes, the Act does not impose an absolute obligation to comply with the requests for hiring hall information in all circumstances. *Local 324, supra*, in fact makes it clear that a Union must merely "deal fairly with an employee's request for information."

Respondent cites *Detroit Edison Co.*, 440 U.S. 301 (1979), the Supreme Court opinion on the duty of Employers to supply information to Unions, and urges that the situation is analogous to the instant matter. Thus Respondent urges an adoption of the "balancing test" of conflicting interests set forth therein, and argues that the interest of the charging parties in obtaining the hiring hall information herein, can and should be outweighed by various legitimate interests of Respondent. While I am not persuaded that the analogy to *Detroit Edison, supra* is necessarily apt, I do find some similarities in the rationales and the underlying considerations in both situations. I also believe that the admonition in *Local 324, supra* to "deal fairly" with requests for hiring hall information presupposes some sort of balancing test between the necessity for the

information and the possible legitimate and compelling interests that a Union may have in denying the requests.

I now turn to an examination of these issues. The initial question to be decided is whether the requests of the charging parties had a reasonable basis. I credit the testimony of the charging parties that they requested to see the job lists because they reasonably believed that they were being discriminated against by Respondent in the operation of its hiring hall. In this connection I note that the evidence discloses that nearly all of the requests were made, when the charging parties were unemployed and awaiting referral from the hall, while at the same time Respondent's officials were announcing 100% or plentiful employment among the membership. McMurray and Clarke were both offered referrals by Respondent outside of their respective specialties, contrary to Respondent's normal practice of referral by specialty. In Clarke's case this referral by Respondent raised even more suspicions in his mind, by virtue of the fact that on the very day that he was offered the job outside his specialty, he was told that Respondent on the same day had referred five men to jobs in Clarke's specialty. Thus I find it quite reasonable for Clarke to have concluded from these facts, that the referral to him by Respondent outside his specialty was offered knowing he would refuse, and was an attempt to circumvent him on the list and not to offer him jobs in his specialty that it gave out to others on that day. Thus it was quite reasonable for him to request to see the list, and find out who had been referred to the ceiling jobs on that day, and where these members stood on the list in relation to him.

Additionally I note that Clarke lost a job that he thought he had obtained on his own, after having been told by the Employer that he needed only clearance from the hall to work. When Clarke called the Respondent to ask about this job, he ws told by O'Connor that two men had already been referred from the hall to that job. It may very well be true that Respondent had, as testified to by O'Connor, already sent out the two men, prior to Clarke having called. However, that it not the issue. Once again these facts certainly could provide Clarke and

I find that it did, a reasonable belief that he was again being circumvented by Respondent. Thus the official at Duncan apparently said nothing to him about having already called the hall, and clearly led Clarke to believe that he needed only to receive Respondent's approval to obtain the job. When he was told by O'Connor that men had already been referred, it certainly could have raised suspicions in his mind, that once again he was being treated unfairly, and that perhaps no one had been dispatched until after his interest in the job had become known. Thus when he asked McGuiness to see the list to verify who had been sent out in his place, he clearly had a reasonable basis for the request.

I note also that the contract provides for a 50-50 ratio of job referrals, so that the referral of the two men, while denying the Employer the right to hire someone of his choice, may have violated the contract. This provides but another reason to justify Clarke's checking the referral lists.

Finally I agree with General Counsel's contention that the way Respondent operates its hiring hall herein, provides in and of itself additional support for the charging parties' beliefs. Thus contrary to prior practice, Respondent since 1979 has not utilized a shape-up or hiring hall where employees appear, sign a list and are dispatched. Persons seeking employment now sign up and receive referrals by phone, and consequently have no opportunity to ascertain who else may have been referred or in what order, and cannot determine whether referrals have been fairly distributed. The charging parties herein were constantly complaining about the unfairness of this system both in their literature and at meetings. In these circumstances I find Respondent's system itself was supportive of the reasonable belief of the charging parties that they were being discriminated against in the operation of the hiring hall by Respondent.

Respondent argues on the other hand, that the charging parties had no belief, reasonable or otherwise, that they were being treated unfairly by the Respondent's hiring hall, and that the real motive for their requests for hiring hall information,

was to obtain an additional outlet for their dissemination of campaign literature. Respondent contends initially that each of the charging parties during this period was working for much of the time. While that may be true, they were also out of work for sometimes long period of time,[30] while awaiting referrals, and while Respondent's officials were boasting about 100% employment of its membership. Moreover a number of the jobs received by the charging parties were obtained on their own. These jobs of course can aprovide no basis for disbelieving their testimony that they thought they were being treated unfairly, since Respondent had no role in referring these jobs to them. Indeed in one instance, as noted above, Clarke thought he had obtained a job on his own from the Employer, only to be told by Respondent that it had already filled these positions, which lends further support to Clarke's belief that Respondent may have been discriminating against him. I therefore find Respondent's reliance upon the fact that the charging parties were working for much of the time in question, to be misplaced, and far from sufficient to conclude that they were not acting in good faith when they made their requests.

Respondent also points to the fact that during the late January visits to the hall to request to see the list, Harte and/or McMurray distributed campaign literature, and on the second day McMurray took a photograph of O'Connor, admittedly for possible campaign use. Additionally, Respondent notes that McMurray who was running for office against McGuiness in the June 1983 election, admittedly circumvented Respondent's campaign rules with respect to disclosure of names and addresses of members, by tape recording this information without the knowledge or consent of Respondent. Finally, Respondent argues that the fact that both Harte and McMurray, the two leading dissidents, sent the identical letter to Respondent requesting the information, at relatively the same time during the heat of the election campaign, demonstrates that they lacked credibility in connection with their stated purpose. I do not agree.

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[30] For instance McMurray was out of work from 1/31/83 to 4/15/83.

I note initially that the charging parties began making requests to see the lists from as far back as the summer and fall of 1982, well before McMurray began to run against McGuiness for Business Manager. I also do not believe that the fact that Harte and McMurray distributed literature on January 25 and 26 necessarily establishes that their requests to the list on that date were not made in good faith. They may have suspected based on prior events, that their requests would again be refused or put off, but I am still persuaded that they did believe they were not being treated fairly and wished to see the list in order to investigate whether their referral rights were being protected.

I attach little significance to McMurray's taking a picture of O'Connor, since he credibly explained that he brought the camera in order to photograph anticipated violence, based on Harte's being threatened the day before by Ford for distributing literature. The fact that he took the picture of O'Connor although no violence took place,[31] and admitted that he might use it for campaign purposes, is again far from sufficient to establish that the request for referral information was not made in good faith.

As for McMurray's secretive taping of names and addresses of members contrary to Respondent's regulations, it is clear that he intended to use the information for campaign purposes. However, the taping did not occur contemporaneously with the numerous hiring hall requests that he made, and has not adduced any other evidence to establish a connection between these events.[32]

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[31] I note that O'Connor did threaten them with arrest for giving out literature.

[32] I find contrary to Respondent's assertions, nothing suspicious or damaging about the fact that Harte and McMurray sent identical letters to Respondent requesting hiring hall information at around the same time. They freely admitted using an attorney to prepare the letters, and the evidence is clear that both of them were out of work and awaiting referral at the time that they sent out their letters.

Respondent also contends that the good faith assertion by the charging parties of their belief that they were discriminated against was rejected by the Board itself, when it refused to issue complaint on the 8(b)(2) allegations made by the charging parties concerning the discriminatory implementation of referrals by the Union. I again do not agree. The record is silent as to what facts the Region evaluated in its decision, or the basis for its action. The Directors investigation serves a more limited function than the hearing necessary under the Act, and cannot therefore serve as a replacement for the Board's adjudicatory responsibility. *Hotel and Restaurant Employees' Union Local 274 (Hospitality Catering)*, 269 NLRB #86 (1984) Slip op. p. 5. Moreover, I note that the withdrawal of Harte's charge took place on May 9, 1983, subsequent to all of his requests. The record is silent as to the dates of the withdrawals of the other charges, but it appears that they were also subsequent to their requests to see the lists. Thus the disposition of the 8(b)(2) portion charges is not determinitive even as to the issue of whether in fact Respondent discriminated against the charging parties in referrals, much less as to whether they believed that they were discriminated against or treated unfairly by the Respondent's hiring hall. Moreover, in my view, the belief that the charging parties need have, that they were treated unfairly, need not rise to the level of discrimination which would be unlawful under the Act in order to justify their requests to see hiring hall records.

Finally, I am of the opinion that the written requests for information made by Harte and McMurray were also neither overbroad nor burdensome. The charging parties had been denied access to the job lists for months without any explanation by Respondent. Thus the request for information for a six month period was appropriate. No evidence was submitted by Respondent that the request would create any significant burden in compiling the information sought by the charging parties.

As for the request for addresses and phone numbers, they credibly testified that they wished to be able to verify whatever information they might be given from Respondent's records.

This appears to be a reasonable concern,[33] particularly where as here Harte and McMurray both questioned the reliability and accuracy of their work sheets kept by Respondent and previously shown to them instead of the records that they sought.

Additionally, I would note Clarke's unrefuted testimony that some jobs dispatched by Respondent, to an empty building for example, are likely to be and usually are of longer duration. Sometimes jobs can last up to two years. Clarke also testified that he never has been dispatched by Respondent to any job that lasted a year or more. Since the duration of jobs is not included on any of Respondent's hiring hall records, members cannot ascertain this information from merely inspecting the records. Thus is would be necessary to contact the employees sent out on jobs, in order to determine how long each dispatch lasted. Therefore this provides but another reason for the charging parties to request addresses and phone numbers, so that they could find out whether they were being discriminated against in assignments with respect to job duration.

Moreover, even if it were concluded that an additional purpose of some or even all of the various hiring hall requests made by the charging parties, was to use the information for campaign purposes, Respondent would still not be privileged to deny their requests, as long as the requests were also, as I have found, based on and motivated by a reasonable belief that they were being discriminated against in the hiring hall. Analagyzing, as Respondent itself urges, to the *Detroit Edison*, *surpa* type situation, the Board has held that where a union's request of an employer for information has a legitimate purpose, the fact that it may desire to use such information for organizational or campaign purposes, does not provide a defense to an employer's refusal to supply such information.

Thus, "it is well established that where a union's request for information is for a proper and legitimate purpose, it cannot

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[33] See *Local 324*, *supra*, where this concern was advanced by the charging party, and the Board found the request for addresses and phone numbers to be appropriate.

make any difference that there may also be other reasons for the request or that the data may be put to other uses." *Associated General Contractors of California*, 242 NLRB 891, 894 (1979).[34]

Respondent raises several other defenses to its refusal to permit access by the charging parties to its records. Preliminarily it argues that any Board order requiring Respondent to furnish hiring hall information which encompasses disclosure of names and addresses of union members is contrary to the Labor Management Reporting and Disclosure Act of 1959. Respondent specifically refers to Section 401(C) of that Act, which sets forth requirements for the disclosure of members names and addresses in an intra-unon election campaign, and argues that this establishes that "Congress in 1959 chose to allow unions in all instances to determine whether or not its membership lists would become available for public use." Thus Respondent contends that the LMRDA proscription against disclosure supercedes any rights under the NLRA.

I find Respondent's position on this issue to be without merit. The section of the LMRDA cited by Respondent, merely regulates intra-union election campaigns in connection with disclosure of membership lists to candidates, and even at that, does not prohibit a union from granting more extensive disclosure than the statute requires.

Particularly since the overall purpose of the LMRDA is to protect rank and file members from potential abuse by union officials,[35] it cannot reasonably be construed to prohibit a union from disclosing membership information to its members in

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[34] See also *Columbus Maintenance and Service Co., Inc.*, 269 NLRB #37 (1984), where the Board in affirming an ALJ's finding a violation in an employers refusal to supply phone numbers of unit employees to a union, stated as follows: "As the Union's request was related to its role of bargaining representative, and not solely to its campaign needs, we agree with the judge's conclusion that Respondent violated Section 8(a)(5) and (1) by refusing to supply the requested telephone numbers." *Id.* Slip op. p. 2.

[35] *Marshall v. Local Union 478, Laborers' International Union*, 461 F. Supp 185, 188 (1978).

appropriate circumstances. Clearly the intent of the statute is to provide a minimum amount of disclosure in an election campaign, not to prevent a Union from doing so, or authorizing a Union to decline to do so in appropriate situations.

Finally, in this connection I note the ALJ's decision in *Local 324, supra,* where he observed that he did not construe various provisions of the LMRDA as "delimiting the scope of a union's obligations to furnish information to the employees it represents." *Id.* at 599.

Respondent also contends that in applying the balancing test set forth in *Detroit Edison, supra,* that it carefully and in good faith evaluated the legitimacy of the charging parties' requests, balanced them against legitimate union interests, and reasonably refused the requests.

Respondent relies on the testimony of its officials, Boyle and McGuiness, that after receiving the written requests from McMurray and Harte in February of 1983, they reviewed the members work cards and District Council Fringe Benefit reports, and concluded that both Harte and McMurray had been working steadily for the six month period covered by their requests for hiring hall information. This evidence allegedly convinced McGuiness that Harte and McMurray had not been treated unfairly in connection with referrals, and that they had no reason to see the records, particularly since the disclosure of names and addresses of members allegedly violated a long standing union policy of confidentiality of this information.

I find the Respondent's arguments, as well as McGuiness' testimony far from convincing. Firstly, these explanations do not account for Respondent's numerous other denials of the previous and subsequent oral requests to see the job lists made by Harte, McMurray and Clarke. These denials occurred in the summer of 1982, October 1982, and January 1983, all before Respondent made its alleged evaluations of the propriety of Harte and McMurray's written requests in February 1983. Moreover, no testimony was adduced that any such evaluation

was made of Clarke's work history, while he was also denied access to the job lists on a number of occasions, even as late as May 1983, after the incident with the Duncan job that he had lost.

Secondly, even as to Harte and McMurray's written requests, the testimony of Respondent's witnesses is not persuasive. They claim that their review of the records of Harte and McMurray convinced them that the members had been working steadily and were therefore treated properly by the hiring hall. However it was admitted that Respondent's officials did not examine its referral or shape-up lists, nor examine work sheets of other members. It was clear that the complaints of Harte and McMurray as well as Clarke, asserted that they believed other members may have received referrals which should rightly have gone to them. Thus, it is essential to compare the records of other members with the charging parties, in order to make a reasonable evaluation of their claims.[38] The failure of Respondent to do so, detracts substantially from the reliability of McGuiness' testimony and Respondent's contention, that it reasonably viewed the charging parties' claims as lacking in substance.

In any event, in my judgment it is not the function of Respondent to evaluate the merits of the charging parties' asserted contentions. Analagyzing once again to the *Detroit Edison*, *supra*, type of information request, as Respondent urges, the Board has consistently held that the merits of the Union's underlying grievance is not significant, and that an employer cannot comply with its obligation to disclose information by making its own evaluation of the information requested, and concluding even if in good faith, and/or correctly, that the grievance is nonmeritorious, and/or the information is not essential to the union's decision making functions. *Associated General Contractors*, *supra*, p. 894. See also *Conrock Co.*, 263 NLRB 1293, 1294

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[38] I note that although the charging parties did receive some referrals from Respondent during the period in question, they also obtained a number of their jobs on their own.

(1982); *Herk Elevator Maintenance Inc.*, 197 NLRB 96, 97 (1972).

Thus the charging parties are entitled to judge for themselves herein whether their hiring hall rights have been violated and need not be satisfied by Respondent's investigation of their claims.[37]

Turning to the Respondent's allegation that its need for "confidentiality" with respect to phone numbers and addresses justified its refusal to disclose the information, I find this contention to be entirely specious and pretextual, and insufficient in any event to provide it with a defense herein. Respondent's various officials, including McGuiness, who denied the numerous requests for hiring hall information by the charging parties, never at any time mentioned to them that confidentiality was a reason for its actions in denying the requests.[38] Indeed the oral requests made by the charging parties, contained no reference to addresses or phone numbers. Furthermore McGuiness seems to be the only official of Respondent who was aware of this, well known policy of "confidentiality". His testimony that he became aware of it when informed years ago by a Union officer who has died since, lacks credence. Admittedly, the policy has never been memorialized in any writing, or in Respondent's Constitution or By-laws.[39]

Most significantly, John F. O'Connor, one of Respondent's business agents and actively involved with hiring hall procedures, was obviously unaware of this alleged "policy", since he never mentioned it in his testimony as a reason for denying

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[37] Indeed it may very well be that the information disclosed may have satisfied the charging parties that they were being properly treated. See *Local 324, supra*. 598.

[38] See *McDonnell Douglas Corp.*, 233 NLRB 881, 890 (1976).

[39] McGuiness' attempt to establish that the policy is in writing, by pointing to the Constitutional provisions dealing with elections is equally unconvincing. Clearly this provision is merely in compliance with the LMRDA's requirements and does not reflect any Union policy of confidentiality.

any of the requests made to him. In fact when asked, O'Connor stated that he was unaware of any Union policy with regard to disclosure of this type of information, and that he refused to permit it, because he felt that the charging parties' work sheets were sufficient for their inquiries.[40] Moreover, the belated partial corroboration of Boyle on this issue, came only as a result of leading questions, and at that only referred to McGuiness mentioning to him confidentiality as to phone numbers, and not addresses, as a factor in McGuiness' decision to refuse to disclose the information to charging parties Harte and McMurray.

Thus, I conclude that McGuiness' assertion of confidentiality as a reason to refuse the requests, was an afterthought conjured up by Respondent after the fact to attempt to justify its discriminatory actions against the charging parties.[41]

Assuming arguendo, that the confidentiality defense had in fact been considered by Respondent in its decision, it has still fallen far short in meeting its burden of establishing the validity of such a defense. Thus when a claim of confidentiality is raised, the party asserting that claim has the burden of proof. *Pfizer Inc.*, 268 NLRB 918, 919 (1984).

Respondent in relying on *Detroit Edison*, *supra*, claims that Respondent has "unequivocally established that the information sought has always been treated with the highest degree of confidentiality." This is a gross mischaracterization of the record. Indeed as I have found above, this "policy of confidentiality" seems to have only been known to McGuiness, and no other

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[40] This assertion is of course preposterous, since their work sheets do not show records for other members, nor where the charging parties stood in relation to others, which was obviously their true concern.

[41] I note also in this connection my findings above that McGuiness affirmatively stated at a Union meeting that the Respondent's referral and sign in lists were available for anyone to see. Thus it would be unlikely for him to have made such a statement, if a policy of confidentiality had been in existence which would have prevented such lists from being inspected.

officials such as O'Connor. As for telephone numbers and addresses, McGuiness testified that he felt that a lot of people have unlisted numbers, and do not want other people to know where they live and they are entitled to that privacy. However, this unsubstantiated and unsupported testimony has no probative value herein. Respondent has not established the basis of McGuiness' feelings in this regard, and in fact has not even proven that there are any members who even have unlisted numbers, much less that they have expressed a desire for privacy.

Thus, contrary to *Detroit Edison*, *supra.* where the Employer therein had promised the employees that it would keep the information requested by the Union to be confidential, there is no evidence herein that the alleged policy of confidentiality was disseminated to employees, or that any employees sought to have the information kept confidential,[42] or that the employees had an expectation that this information would be kept confidential.[43]

Moreover, the Board has rejected the argument that phone numbers and addresses are "confidential" in the context of a request for hiring hall information. *Local 324*, *supra*; *Local 165*, *supra*. Indeed if Respondent were truly concerned about the members' rights to privacy, it could have offered to release only the information with respect to those members who have unlisted numbers. Or it also could have offered to furnish the information requested aside from the names and addresses. It is noted that in this connection that Respondent's referral list contains neither the members phone number nor address. Yet Respondent made no such alternative offers. This is but another indication of Respondent's arbitrary conduct.[44]

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[42] *Salt River Valley Users' Assoc.*, 272 NLRB -53 (1984(A.L.J.D. slip op. p. 10; *Pfizer*, *supra.* at 919.

[43] *Pfizer*, *supra.*

[44] See *Local 324*, *supra.* at 598.

In summary, I have concluded above that the charging parties requested inspection of Respondent's hiring hall lists and the furnishing of various items of information in regard thereto, based upon a reasonable belief that they were being treated unfairly by Respondent in its operation of the hiring hall. I have also found that Respondent refused to comply with these requests, (1) for discriminatory reasons, because of the charging parties' having engaged inprotected concerted activities, and (2) arbitrarily and without legitimate justification in breach of its duty of fair representation. By this conduct Respondent has violated Section 8(b)(1)(A) of the Act, and I so find.

Conclusions of Law

1. The Associations, and its employer-members, are employers engaged in commerce within the meaning of Section 2(5) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By denying John Harte, Franklin McMurray and Euguese Clarke the right to review and inspect hiring hall records maintained by Respondent, and by refusing to supply them with information with regard to the operation of its hiring hall, Respondent has breached in duty of fair representation in violation of Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take affirmative action designed to effectuate the purposes and policies of the Act.

Respondent argues in this connection, that no affirmative relief is appropriate, since at this point in time no reasonable

need exists to furnish the information. Respondent cites *Local 324, supra.* where the Board affirmed the Administrative Law Judge's recommended order which did not provide for any affirmative relief. Again Respondent refers to the Regional Office's decision on the 8(b)(2) charge having now precluded the existence of any current need for charging parties to have access to the information requested.

Contrary to Respondent's position, I am persuaded that affirmative relief is appropriate in the circumstances herein. As noted above, I attach little significance to the Region's refusal to issue an 8(b)(2) complaint, since no hearing has been held with respect to these issues. As also noted, I do not believe that charging parties' belief of unfair treatment must rise to the level of discrimination under the Act, to warrant their satisfying themselves that they have been treated properly. While it is true that the events justifying charging parties' reasonable belief occurred in 1982 and 1983, I do not think it would be inappropriate to even now require disclosure of information relating to that period of time.

It is true as Respondent points out, that in *Local 324, supra,* the ALJ found, in agreement I would note with the position of General Counsel, that disclosure of the information would be useless to charging party at the time, and recommended only a cease and desist order. However, since the General Counsel did not dispute and apparently did not except to this order, the precedential significant of this aspect of the case, is somewhat dubious.

More to the point, and more dispositive with respect to this issue is *Local 165, Bartenders, supra,* a more recent case, where the ALJ affirmed by the Board, ordered Respondent to affirmatively honor requests by the charging party to review and inspect hiring records. See also *Local 1080, Carpenters, supra,* where the Board also ordered Respondent affirmatively to make hiring records available to referral applicants.

Finally I also note in this connection that I have concluded that Respondent discriminatorily denied the charging parties access to its hiring hall records, because of their engaging in dissident intra-union activities. This also militates in my view, in favor of ordering affirmative relief against Respondent.[45]

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[46]

Carpenters Local 608, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Denying employees whom it represents in collective bargaining, the right to review, or inspect hiring hall records, or refusing to provide such employees information upon request with regard to the operation of its hiring hall, where such information or request is related to an alleged failure to properly refer such employees, because said employees engaged in intra-union political activities or other protected concerted activitaies.

(b) Arbitrarily denying employees whom it represents in collective bargaining, the right to review or inspect hiring

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[45] This is not to say that any future request by charging parties or other individuals for hiring hall information with respect to other periods of time must necessarily be granted. Any such requests must be evaluated with respect to their reasonableness, as well as the alleged reasons by Respondent for any future denials.

[46] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

hall records, or refusing to provide such employees information with regard to the operation of its hiring hall, where such information or request is related to an alleged failure to properly refer such employees.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Honor requests by Eugene Clarke, Franklin McMurray and John Harte to inspect or review hiring hall records, and provide such employees information upon request with regard to the operation of its hiring hall, where such requests are related to the alleged failure to properly refer such employees.

(b) Post at its business offices, hiring hall and meeting hall, copies of the attached notice marked "Appendix A".[47] Copies of the notice on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the said notices are not altered, defaced, or covered by any other material.

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[47] In the event that the Board's Order is enforced by a Judgment of a United states Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Noticy the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated: Washington, D.C. March 26, 1985.

Steven B. Fish
Administrative Law Judge

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

AFTER A TRIAL IN WHICH ALL PARTIES PARTICIPATED AND WERE AFFORDED THE OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF THEIR RESPECTIVE POSITIONS, IT HAS BEEN FOUND THAT WE HAVE VIOLATED THE NATIONAL LABOR RELATIONS ACT IN CERTAIN RESPECTS AND WE HAVE BEEN ORDERED TO POST THIS NOTICE AND CARRY OUT ITS TERMS.

WE WILL NOT deny employees whom we represent in collective bargaining, the right to review or inspect our hiring hall records, or refuse to provide such employees information upon request with regard to the operation of our hiring hall, where such information request is related to our alleged failure to properly refer such employees, because said employees engaged in intra-union political activities or other protected concerted activities.

WE WILL NOT arbitrarily deny employees whom we represent in collective bargaining the right to review or inspect our hiring hall records, or refuse to provide such employees information with regard to the operation of our hiring hall, where such information or request is related to an alleged failure to properly refer such employees.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL honor requests by Eugene Clarke, Franklin McMurray and John Harte to inspect or review our hiring hall records, and provide such employees information upon request with regard to the operation of our hiring hall, were such requests are related to our alleged failure to properly refer such employees.

Appendix A-1

CARPENTERS LOCAL 608,
UNITED BROTHERHOOD
OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO

(Union)

Dated_____ By_____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT
BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office. 26 Federal Plaza, Rm. 3614, New York, New York 10278. Telephone No. (212) 264-0360

Appendix B

TRANSCRIPT CORRECTIONS

1. Line 16 on page 8 should read "jobs the hiring hall is exclusive."

2. Lines 3-6 of page 10 should be amended to read "And on several occasions, they have requested either they be shown the hiring hall lists or that copies containing information regarding the hiring hall procedure is to be turned over to them."

3. Lines 8-10 on page 10 should read "The hiring hall or job referral service operates through a call-in service system -- that is there is no shape-up before the men are sent out to work."

4. Line 12 on page 10 should be corrected to read "All that happens is someone who wants a job calls in . . ."

5. Line 15 on page 10 should be corrected to read "I think there is no shaping system."

6. Lines 17-18 on page 10 should be corrected to read "The only way that they would have to check to see who gets hired is the hiring hall records."

7. Lines 20-21 on page 10 should be corrected to read "Now its clear that a union owes a duty of fair representation to all its members."

8. Lines 22-24 on page 10 should be corrected to read "And it is Board law that it would be a violation of Section 8(b)(1)(A) of the Act for these members or any other members to be discriminated against."

(2)

No. 86-1760

In the Supreme Court of the United States

OCTOBER TERM, 1986

CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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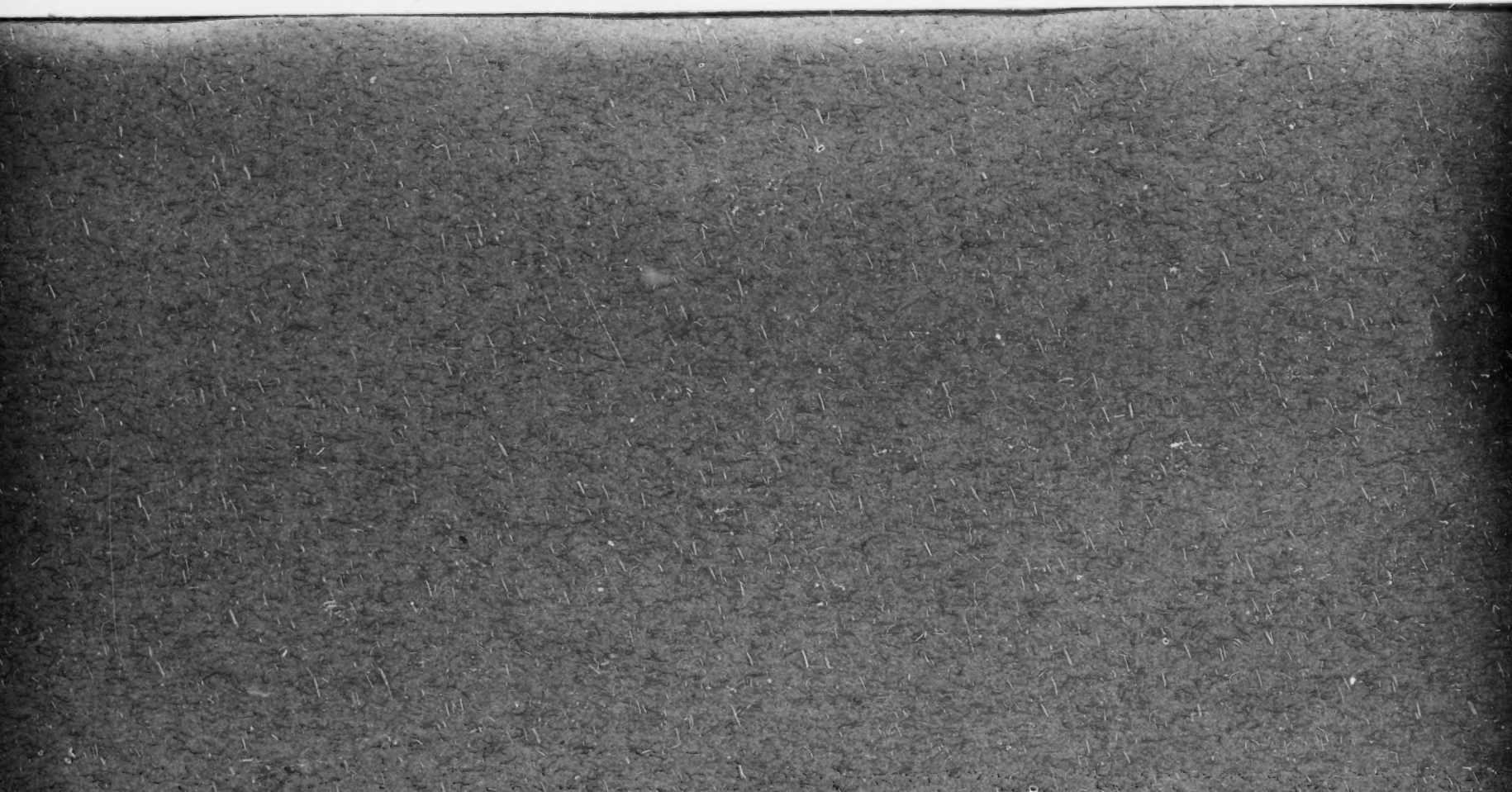

QUESTION PRESENTED

Whether the NLRB, having found that a union improperly denied certain employees access to information related to their claim that the union was discriminating against them in job referrals, could order the union to permit those employees to inspect and duplicate hiring hall records, including the names, addresses, and telephone numbers of persons using the hiring hall during a six-month period.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1760

CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, PETITIONER

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NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A2-A11) is reported at 811 F.2d 149. The decision and order of the National Labor Relations Board (Pet. App. A12-A16), and the decision of the administrative law judge (Pet. App. A17-A59), are reported at 279 N.L.R.B. No. 99.

JURISDICTION

The judgment of the court of appeals was entered on February 10, 1987. A timely petition for rehearing was denied on March 4, 1987 (Pet. App. A1). The petition for a writ of certiorari was filed on May 1, 1987. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT

1. Pursuant to collective bargaining agreements between the District Council of New York of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, of which petitioner is a member, and various associations of employers engaged in the construction and building trades in New York City, petitioner operates an exclusive hiring or referral hall (Pet. App. A12 n.1, A19-A20). Under the agreements, employers must fill the first opening for a carpenter on a jobsite, and every second opening thereafter, through the hiring hall (*id.* at A20). Petitioner, in turn, must "establish and maintain an open employment list for the employment of competent workmen" (*id.* at A20-A21). Since 1979,[1] petitioner has complied with this requirement by use of a call-in system under which individuals seeking work, and employers desiring workers, call the hiring hall and petitioner then refers qualified workers to particular jobs in the order in which the workers have called in (*id.* at A4, A21-A23). Approximately 700-800 of petitioner's over 3,000 members use this referral system in the course of a year (*id.* at A23).

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[1] Prior to 1979, referrals were made on the basis of daily "shape-ups" at petitioner's offices (Pet. App. A21).

At nearly every monthly union meeting from May through December 1982, petitioner's officers stated either that the membership was 100% employed or that work opportunities were plentiful (Pet. App. A27). During that same period, however, three of petitioner's members—John Harte, Frank McMurray, and Eugene Clarke—did not receive prompt referrals (*id.* at A28). Harte, McMurray, and Clarke became concerned that petitioner was discriminating against them because of their dissident union activities (*id.* at A4-A5, A24-A27).[2] They accordingly requested on several occasions that they be allowed to examine the hiring hall's referral records (*id.* at A5, A28-A31). Petitioner's business manager, Paschal McGuiness, refused their various requests without explanation, although he had previously stated that the hiring hall maintained a job list and that any member could see it (*id.* at A5, A28-A31).

In February 1983, after consulting with an attorney, Harte and McMurray sent letters to McGuiness indicating that they needed the names, addresses, and phone numbers of persons receiving referrals during the preceding six months in order that they might determine whether they had been discriminated against in job referrals (Pet. App. A31, A42, A46 n.32). McGuiness agreed to meet with them to discuss their request (*id.* at A32), but, on meeting with them, again refused without explanation to produce the requested information; he would only allow Harte and McMurray to examine their individual work rec-

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[2] Harte, McMurray, and Clarke were the founders of a group of dissident union members (Pet. App. A24). In addition, each had been involved in unsuccessful election campaigns against petitioner's incumbent officers and had been critical of many of petitioner's policies (*id.* at A24-A26).

ords (*ibid.*). In May 1983, when Clarke expressed concern that petitioner had interfered with his efforts to obtain a job, McGuiness again without explanation refused him access to the job list (*id.* at A33, A34, A43).

2. In response to unfair labor practice charges filed by Harte, McMurray, and Clarke, the General Counsel of the National Labor Relations Board (NLRB) issued a complaint alleging, inter alia, that petitioner had violated its duty of fair representation, and thus Section 8(b)(1)(A) of the National Labor Relations Act (NLRA), 29 U.S.C. 158(b)(1)(A), by refusing to permit Harte, McMurray, and Clarke to inspect the hiring hall records in connection with their discrimination claims (Pet. App. A5, A18). An administrative law judge (ALJ) found in the General Counsel's favor, and the NLRB affirmed (*id.* at A12-A16, A17-A57).

a. The ALJ "credit[ed] the testimony of the charging parties that they requested to see the job lists because they reasonably believed that they were being discriminated against by [petitioner] in the operation of its hiring hall" (Pet. App. A43). He found that "nearly all of the requests were made[] when the charging parties were unemployed and awaiting referral from the hall, while at the same time [petitioner's] officials were announcing 100% or plentiful employment among the membership" (*ibid.*). The ALJ rejected petitioner's contention that "the real motive for [the employees'] request for hiring hall information, was to obtain an additional outlet for their dissemination of campaign literature," noting that the employees' initial requests antedated such campaign activity and that there was no evidence connecting that campaign activity with any of

the other information requests (*id.* at A44-A45, A45-A46).

The ALJ further found that the employees' request for hiring hall records was a reasonable one (Pet. App. A47-A52). He noted that the "charging parties had been denied access to the job lists for months without explanation by [petitioner]," that they had "credibly testified that they wished to be able to verify whatever information they might be given from [petitioner's] records[,]" and that they needed this information to determine "whether they were being discriminated against in assignments with respect to job duration" (*id.* at A47, A48).

The ALJ rejected petitioner's claim that Section 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 481(c),[3] barred the disclosure of such information (Pet. App. A49). He observed that Section 401(c) "merely regulates intra-union election campaigns in connection with [the] disclosure of membership lists to candidates, and even at that, does not prohibit a union from granting more extensive disclosure than the statute requires" (*id.* at A49). He further noted

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[3] Section 401(c) of the LMRDA provides (29 U.S.C. 481(c)) that "[e]very * * * labor organization, and its officers, shall be under a duty * * * to comply with all reasonable requests of any candidate [for office in that labor organization] to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing * * * and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members * * *. Every bona fide candidate shall have the right, once within 30 days prior to an election[,] * * * to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment * * *."

that "the intent of the statute is to provide a minimum amount of disclosure in an election campaign, not to prevent a Union from doing so, or authorizing a Union to decline to do so in appropriate [circumstances]" (*id.* at A49-A50).

Finally, the ALJ found "entirely specious and pretextual" petitioner's claim that it needed to maintain the confidentiality of the phone numbers and addresses of those who used the hiring hall (Pet. App. A52). He found no credible evidence that petitioner had a policy of keeping such information confidential (*ibid.*). Nor could he find any evidence "that the alleged policy of confidentiality was disseminated to employees, or that any employees sought to have the information kept confidential, or that the employees had an expectation that this information would be kept confidential" (*id.* at A54 (footnote omitted)). Rather, he found that the assertion of confidentiality "was an afterthought conjured up by [petitioner] after the fact to attempt to justify its discriminatory actions against the charging parties" (*id.* at A53).

b. The NLRB adopted the findings and conclusions of the ALJ (Pet. App. A12). Accordingly, it ordered petitioner to cease and desist from arbitrarily denying employees information concerning the operation of the hiring hall (*id.* at A13). And it ordered petitioner to honor the information requests made by Harte, McMurray, and Clarke, including but not limited to the written requests made in February 1983 and, in that connection, to permit them at their own cost to inspect, review, and copy the requested names, addresses, and telephone numbers of persons using the hiring hall during the pertinent period (*ibid.*).

3. The court of appeals affirmed the NLRB's decision and enforced its order (Pet. App. A1-A11).

It noted that "[a] union breaches its duty of fair representation in violation of section 8(b)(1)(A) of the NLRA when it arbitrarily denies a member's request for job referral information, when that request is reasonably directed towards ascertaining whether the member has been fairly treated with respect to job obtaining referrals" (*id.* at A5-A6, citing *NLRB* v. *Local 139, Int'l Union of Operating Engineers*, 796 F.2d 985, 992-994 (7th Cir. 1986)). It found that "there is 'substantial evidence on the record considered as a whole' to support the [NLRB's] finding that the dissidents had a good faith basis for requesting the hiring hall records" (Pet. App. A8). And it likewise found substantial evidence supporting the NLRB's finding that petitioner "did not consider this information to be confidential" (*id.* at A9).

The court rejected petitioner's argument that "the dissidents, through their requests for hiring hall records, should not be allowed to obtain information concerning the membership that they are not otherwise entitled to receive" under Section 401(c) of the LMRDA (Pet. App. A9). It reasoned that the LMRDA "does not prohibit a union from granting more extensive disclosure than the minimum the statute requires" (*id.* at A10). And, the court noted, "[i]t would be anomalous to conclude that * * * a statute designed to protect union members from potential abuse by union officials * * * prohibits a union from disclosing names, addresses and telephone numbers * * * where, as here, such information is necessary to determine whether the union has violated a worker's rights" (*ibid.*).

Finally, the court rejected "the union's contention that the portion of the [NLRB's] order permitting the dissidents to copy addresses and telephone num-

bers of members using the hiring hall was overbroad" (Pet. App. A11). It noted that "[t]he dissidents will need this information to verify the accuracy of the hiring hall records" (*ibid.*). And, it concluded, "[a]lthough it is conceivable * * * that the [NLRB] could have provided the same relief and kept the information confidential by having union employees check the information, considering the animus between the union and the dissidents in this case[,] we cannot say that the [NLRB] abused its broad [remedial] discretion" (*ibid.*).

ARGUMENT

The decision below is correct. It does not conflict with any decision of this Court or any other court of appeals. Accordingly, review by this Court is not warranted.

1. Petitioner first contends (Pet. 7-8) that the decision below allows dissident employees to misuse confidential membership information. This contention is specious. The NLRB adopted the findings of the ALJ, which were based on substantial testimony, that Harte, McMurray, and Clarke sought the hiring hall information because they believed petitioner had discriminated against them in job referrals and that there was no evidence that petitioner had a policy of keeping such information confidential. These findings, affirmed by the court below, are correct and in any event do not merit this Court's review. See *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 491 (1951).

2. Petitioner next argues (Pet. 9-15) that, by permitting the three dissident employees to copy the names, addresses, and phone numbers of hiring hall users, the decision below conflicts with Section 401

(c) of the LMRDA which mandates disclosure of union membership lists in certain circumstances and which, petitioner contends, embodies a congressional policy against additional disclosure of such lists. This contention is also wrong.

To begin with, this case does not concern the union's membership list. The NLRB ordered petitioner to make available the names, addresses, and phone numbers *not* of its members but of persons using its hiring hall during a six-month period. Hiring hall records are not the same as union membership lists. They contain different information and could cover entirely different groups of employees. Indeed, only approximately 700-800 of petitioner's over 3000 members use the hiring hall. See Pet. App. A23.

In any event, Section 401(c) does not embody any policy against disclosure. Section 401 merely provides that, in certain circumstances, a "bona fide candidate [for office in a labor union] shall have the right * * * to inspect a list containing the names and last known addresses of all members of the labor organization * * *" (29 U.S.C. 481(c)). Nothing in the language or legislative history of this affirmative mandate suggests that Congress simultaneously intended to "prohibit a union from granting more extensive disclosure than the minimum the statute requires" (Pet. App. A10).[4] Indeed, as the court below noted (*ibid.*), "[i]t would be anomalous to conclude that the LMRDA, a

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[4] The legislative history on which petitioner relies (Pet. 11-14) consistently refers to intra-union "elections" and "election procedures." These references make clear that Congress crafted Section 401(c) to respond to the needs of candidates for union office. Nothing in this legislative history suggests that Congress intended Section 401(c) otherwise to preclude disclosure of union membership information.

statute designed to protect union members from potential abuse by union officials, * * * prohibits a union from disclosing names, addresses and telephone numbers of union members where, as here, such information is necessary to determine whether the union has violated a worker's rights."

In fact, Section 603 of the LMRDA states (29 U.S.C. 523) that, "[e]xcept as explicitly provided to the contrary," nothing contained in the LMRDA shall "reduce or limit the responsibilities of any labor organization * * * under any other Federal law * * *[,] take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law[,] * * * or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended." Section 401 clearly contains no provision prohibiting a disclosure of information deemed appropriate by the NLRB to remedy a union's unfair labor practice. Thus, the LMRDA cannot properly be read in the manner that petitioner suggests.

3. Finally, petitioner errs in suggesting (Pet. 16-17) that the NLRB's remedial order should be modified to prevent union dissidents from misusing lists of union members' names, addresses, and telephone numbers. For one thing, the NLRB, adopting the findings of the ALJ, determined that these employees had no such intention. See Pet. App. A12, A43-A48. Moreover, as the court below noted (*id.* at A6-A7), even if these employees did intend to use the information for electioneering purposes as well for investigating their treatment in job referrals, the NLRB is under no obligation to stop them. Cf. *NLRB* v. *Leonard B. Herbert & Co.*, 696 F.2d 1120, 1126 (5th Cir.) (employer cannot deny a union's request for

information related to its role as bargaining agent merely because the union may also use the information for organizational or campaign purposes), cert. denied, 464 U.S. 817 (1983); *Utica Observer-Dispatch, Inc.* v. *NLRB*, 229 F.2d 575, 577 (2d Cir. 1956) (same); *Columbus Maintenance & Service Co.*, 269 N.L.R.B. 198, 198 n.1 (1984) (same); *Associated General Contractors*, 242 N.L.R.B. 891, 893-894 (1979) (same). The NLRB is entitled to impose all measures that, in the exercise of its broad remedial discretion, it deems necessary to promote the purposes of the NLRA. See *NLRB* v. *J.H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 262-263 (1969); *Virginia Electric & Power Co.* v. *NLRB*, 319 U.S. 533, 540-541 (1943). And, as the court below noted (Pet. App. A11), "considering the animus between the union and the dissidents in this case[,] [it] cannot [be said] that the [NLRB] abused its broad discretion" here.[5]

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[5] Contrary to petitioner's suggestion (Pet. 16), the court below did not defer to the NLRB's interpretation of the LMRDA. Rather, it deferred to the NLRB's determination that these measures were necessary to remedy a violation of the NLRA.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1987

☆ U. S. GOVERNMENT PRINTING OFFICE: 1987 181483 40399